

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

4 UNITED STATES OF AMERICA,) CRIMINAL NO. 19-00099-DKW
5 Plaintiff,) Honolulu, Hawaii
6 vs.) January 22, 2024
7 MICHAEL J. MISKE, JR.,)
8 Defendant.)

12 APPEARANCES:

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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

08:34AM 1 MR. INCIONG: Thank you, Your Honor. Yes, we do have
08:34AM 2 at least a draft -- written draft that we can file later, but I
08:34AM 3 can advise the Court what our position is.

08:34AM 4 First, Your Honor, we object to any dismissal or
08:34AM 5 otherwise altering of the course we're on to begin opening
08:34AM 6 statements today. The plea of Mr. Stancil is no different than
08:34AM 7 the plea of Ms. Fabro-Miske or, quite frankly, any of the other
08:34AM 8 members of the Miske Enterprise who have entered guilty pleas
08:34AM 9 in this case previously. It can be cured by a simple curative
08:34AM 10 instruction, just as Your Honor did with Ms. Miske.

08:34AM 11 I mean I -- I had a case, it's been some years now,
08:34AM 12 with Judge Seabright, a very -- very similar situation. It was
08:35AM 13 a brother, a half brother who actually went to trial. The half
08:35AM 14 brother pled guilty two days into the trial. That issue was
08:35AM 15 raised on appeal, the conviction was affirmed.

08:35AM 16 So there's no basis for any -- any action based on any
08:35AM 17 alleged prejudice that would cause us not to be able to go
08:35AM 18 forward with this jury.

08:35AM 19 THE COURT: One question, and I -- this is actually a
08:35AM 20 question for both sides, but since you're up, Mr. Inciong,
08:35AM 21 first I'll ask you.

08:35AM 22 You said that Mr. Stancil's plea is no different than
08:35AM 23 that of many others, including Ms. Fabro-Miske's plea about ten
08:35AM 24 days ago. One thing that does seem to be different to me is
08:35AM 25 the fact that Mr. Stancil's plea agreement does not have a

08:35AM 1 cooperation provision. And that seems to, in the words of
08:35AM 2 some, blunt, the force of many of the arguments presented in
08:35AM 3 the motion.

08:35AM 4 Do you see it the same way? Do you see that that's a
08:36AM 5 material difference or not?

08:36AM 6 MR. INCIONG: I do, Your Honor, but however I have to
08:36AM 7 apprise the Court that --

08:36AM 8 THE COURT: It doesn't mean he's not going to testify.
08:36AM 9 I understand that.

08:36AM 10 MR. INCIONG: That may change, but as of this moment,
08:36AM 11 yes, I believe it does lessen the argument by the defense for
08:36AM 12 the reasons that they've stated.

08:36AM 13 THE COURT: All right. Mr. Kennedy, Ms. Panagakos.

08:36AM 14 MS. PANAGAKOS: Thank you, Your Honor. I disagree
08:36AM 15 that it blunts the force of our argument. You know, when it
08:36AM 16 was just Ms. Fabro-Miske, and the jury is instructed don't
08:36AM 17 consider the case against her, don't speculate what happened,
08:36AM 18 you know, a variety of things could have happened with
08:36AM 19 Ms. Fabro-Miske. It could have been dismissed.

08:36AM 20 But now you have Ms. Miske, who has pled guilty and is
08:36AM 21 going to cooperate, and tell the jury that she's pled guilty,
08:36AM 22 which means there's no inference that you can draw with regard
08:36AM 23 to Mr. Stancil. There's no way anything other than a guilty
08:36AM 24 plea could be a conclusion from the disposition of Ms. Miske's
08:37AM 25 case. There's no way the government -- I mean a jury sitting

08:37AM 1 there saw them, and they're going to know he obviously pled
08:37AM 2 guilty. There's no other conclusion they could draw. And now,
08:37AM 3 you know, they said that that could change and he could
08:37AM 4 testify. So either way, I think the jury is going to know that
08:37AM 5 he's pled guilty.

08:37AM 6 And what's unique about -- I mean, first of all, Your
08:37AM 7 Honor, you have the discretion to do this. I mean that's
08:37AM 8 clear. And, you know, the case that Mr. Inciong refers to, I
08:37AM 9 don't think that there was individual voir dire of every juror
08:37AM 10 where two-thirds of the lawyers who are now adversaries to us
08:37AM 11 questioned those jurors. There was a joint defense strategy.
08:37AM 12 That's what -- I mean we made a joint defense decision to do
08:37AM 13 the jury selection the way we did. Had we anticipated this,
08:37AM 14 obviously we would have either divided the jurors and
08:37AM 15 questioned each one of them ourselves or we would -- would have
08:37AM 16 been assertive about taking more jurors or we would have asked
08:37AM 17 for more time. I mean other cases where there was individual
08:38AM 18 voir dire, the time periods were longer.

08:38AM 19 So that's what's so unique about this case is the way
08:38AM 20 the jury selection was done. We have a jury that has been
08:38AM 21 two-thirds selected by the two people who are now -- have now
08:38AM 22 pled guilty. The jury is going to hear one of them testify
08:38AM 23 against Miske, likely the other one, will know that both of
08:38AM 24 them pled guilty.

08:38AM 25 The nature of the charge, there's no -- there's no way

08:38AM 1 to not draw an inference of guilt from those guilty pleas.

08:38AM 2 Given the nature of the charge that Ms. Miske pled guilty to,

08:38AM 3 we have no idea -- I mean --

08:38AM 4 THE COURT: Isn't that the risk, though? I mean isn't

08:38AM 5 that a concern that the circuit has addressed in coming up with

08:38AM 6 its curative instruction?

08:38AM 7 I mean that's one of the -- I understand there may be

08:38AM 8 other reasons why people disappear from a case that aren't

08:38AM 9 related to having pled guilty, but certainly among the reasons

08:38AM 10 why that occurs, those circumstances are taken into account by

08:38AM 11 the circuit in coming up with its curative instruction.

08:38AM 12 Wouldn't you agree?

08:39AM 13 MS. PANAGAKOS: I would agree with that, yes. That's

08:39AM 14 what the curative instruction is for. And that's why with

08:39AM 15 Ms. Fabro-Miske, that's what we proposed. But there's also

08:39AM 16 times when there's unique circumstances, and that's why Your

08:39AM 17 Honor has the discretion to do what we're asking.

08:39AM 18 I mean, we have not one defendant leaving and two left

08:39AM 19 or in a lot of these cases there's ten defendants and three

08:39AM 20 leave. We have two defendants leaving who's saying, Yeah, now

08:39AM 21 I'm guilty with him, and he's -- and the nature of the charge

08:39AM 22 with Mr. Miske being the crime boss. With us saying the Miske

08:39AM 23 Enterprise doesn't exist, all three of us saying that to this

08:39AM 24 jury, and now two of them telling -- two of the same lawyers

08:39AM 25 who questioned the jurors personally. I mean that's what's so

08:39AM 1 unique about this is these attorneys questioned each juror
08:39AM 2 individually.

08:39AM 3 So that's what's so unique is the individual voir
08:39AM 4 dire, and the nature of the charge that Ms. Fabro-Miske pled
08:39AM 5 guilty to. I mean we had a right -- I mean it's a public
08:39AM 6 proceeding, we had a right to be at Mr. Stancil's change of
08:39AM 7 plea, but we couldn't get in the building. So I don't know
08:39AM 8 right now what he even pled to. I'm completely in the dark.

08:39AM 9 And we shouldn't be starting opening statements in
08:40AM 10 that way either. I mean it wasn't a sealed proceeding, and yet
08:40AM 11 we couldn't be there.

08:40AM 12 And then also the procedural posture of the case. I
08:40AM 13 mean what are we going to lose, six days of jury selection?
08:40AM 14 Why not pick a new jury? It's going to be the fair thing to
08:40AM 15 do. Are you going to get rid of a potential issue of a
08:40AM 16 reversal on appeal? I mean, you know, it's not fair. It's
08:40AM 17 just not fair. And you can do it, and it's only been six days
08:40AM 18 of jury selection. I mean we're going to save six days from
08:40AM 19 these two people being missing.

08:40AM 20 And now we're standing here without the resources of
08:40AM 21 the other two defense teams. I mean if we had another six --
08:40AM 22 you know, it would be another six days of jury selection, we
08:40AM 23 could, you know, be more efficient and more ready to proceed
08:40AM 24 when we do. I mean from a judicial administration standpoint
08:40AM 25 and from the sense of fairness, and because you have the power

08:40AM 1 to do it, I think you should.

08:40AM 2 THE COURT: All right. So let me address this motion
08:40AM 3 Docket 1264. The motion to dismiss the jury and to begin jury
08:41AM 4 selection anew is denied.

08:41AM 5 If -- I don't have any doubt that I have the power and
08:41AM 6 authority to do what the defense is asking. That's not the
08:41AM 7 issue at all. One of the primary issues that we always have to
08:41AM 8 start with I think in these circumstances is whether the
08:41AM 9 Court -- in the Court's estimation there's anything unfair
08:41AM 10 about this jury serving -- sitting in judgment of the
08:41AM 11 defendant. And I just don't have any qualms that they are,
08:41AM 12 that they would be fair.

08:41AM 13 The curative instruction that is proposed by the
08:41AM 14 circuit, which the parties offered up as the instruction to
08:41AM 15 give to the jury when Ms. Fabro-Miske left this case roughly
08:41AM 16 ten days ago, seems to address the concerns of the defense.

08:42AM 17 There are a few specific things that I wanted to
08:42AM 18 comment on. The defense in their written motion makes much of
08:42AM 19 the fact that Mr. Stancil had -- I think it was speculation in
08:42AM 20 the motion because the defense did not know what the contents
08:42AM 21 of his plea agreement was at the time they filed this motion
08:42AM 22 last night. It was speculation that he would testify at trial,
08:42AM 23 and while that remains a possibility, there is no cooperation
08:42AM 24 provision, as I alluded to a few minutes ago, in his -- in his
08:42AM 25 particular plea agreement. So there's not the obligation for

08:42AM 1 him to testify in the way that I think the vast majority of
08:42AM 2 those defendants who have pled guilty have.

08:42AM 3 In addition, there's the notion that somehow through
08:42AM 4 the voir dire process that we embarked on several months ago
08:43AM 5 culminating in the six days of in-person questioning that we
08:43AM 6 just went through a week before last into the start of last
08:43AM 7 week, that that would somehow be tainted in part because the
08:43AM 8 questioning -- the individual questioning permitted by the
08:43AM 9 Court was somehow directed, at least in large part, by the
08:43AM 10 counsel for defendants who are no longer with us.

08:43AM 11 And that there is this notion -- I think the
08:43AM 12 suggestion in the motion that Mr. Miske's counsel didn't have
08:43AM 13 the opportunity because the question -- the extent the
08:43AM 14 questions were being led by counsel for the other defendants, I
08:43AM 15 don't find that to be borne out by any of the facts. It's not
08:43AM 16 what I said. It's not in practice.

08:44AM 17 More importantly, how I conducted the hearings and the
08:44AM 18 record, if the parties or defense disagree with that, I think
08:44AM 19 the record will support exactly that, that whenever there were
08:44AM 20 questions, regardless of who led the questioning, who got up
08:44AM 21 first and started questioning an individual prospective juror,
08:44AM 22 I never cut anyone off. I gave you guys time limits, but even
08:44AM 23 then, even then when I reminded you that you've been there for
08:44AM 24 ten minutes, whether it's the government or the defense, I
08:44AM 25 never said you need to sit down. I never cut you off.

08:44AM 1 And to the contrary, even when the defense, especially
08:44AM 2 the defense, had reached its ten-minute mark or beyond in many
08:44AM 3 instances, I always asked other defense counsel who were not
08:44AM 4 taking the lead if you have any follow-up questions that you
08:44AM 5 would like to ask. And I never, even one time to my memory,
08:44AM 6 cut anyone off and said, You need to sit down because you've
08:44AM 7 gone on too long.

08:45AM 8 So the notion that Mr. Miske's counsel didn't have the
08:45AM 9 opportunity to ask questions that it wanted to ask because
08:45AM 10 other lawyers were leading the questioning of that particular
08:45AM 11 juror, I just don't think is borne out by the record. Frankly,
08:45AM 12 I just don't think it's true. The motion is denied.

08:45AM 13 We're proceeding. Let's get the jury in, please.

08:45AM 14 Mr. Akina, if you approach 90 minutes, I'll give you a
08:47AM 15 ten-minute warning.

08:47AM 16 MR. AKINA: Thank you, Your Honor.

08:47AM 17 THE COURT: And I'll do the same for the defense.

08:49AM 18 (Open court in the presence of the jury.)

08:49AM 19 THE CLERK: Criminal Number 19-00099-DKW-KJM, United
08:49AM 20 States of America versus Michael J. Miske, Jr.

08:49AM 21 This case has been called for jury trial day one.

08:49AM 22 Counsel, please make your appearances for the record.

08:49AM 23 MR. INCIONG: Good morning, Your Honor. Mark Inciong,
08:49AM 24 Michael Nammar, KeAupuni Akina and Aislinn Affinito for the
08:49AM 25 United States. Also present is our case agent, FBI Special

08:49AM 1 Agent Thomas Palmer.

08:49AM 2 THE COURT: Good morning to all of you.

08:49AM 3 MR. KENNEDY: Good morning, Your Honor. Michael

08:50AM 4 Kennedy, Lynn Panagakos, Michael Miske, and Ashley King will be

08:50AM 5 assisting us. Good morning to all of you.

08:50AM 6 THE COURT: All right. Good morning to you as well.

08:50AM 7 You may be seated.

08:50AM 8 Good morning to the 18 persons on our jury. As I

08:50AM 9 promised you when we were together last week, the prosecution

08:50AM 10 and the defense will each have an opportunity this morning to

08:50AM 11 give you what's called an opening statement. An opening

08:50AM 12 statement is an outline of what that party intends to prove and

08:50AM 13 is offered to help you follow the evidence that will come in

08:50AM 14 the following weeks.

08:50AM 15 What counsel say to you, as I've also mentioned more

08:50AM 16 than once, in an opening statement is not evidence. However,

08:50AM 17 you should pay careful attention to what each lawyer says in an

08:50AM 18 opening statement because it may help you better understand the

08:50AM 19 evidence that will follow.

08:50AM 20 Before we begin, I want to start with this instruction

08:50AM 21 to you which is the following: For reasons that do not concern

08:51AM 22 you, the case against co-defendant John Stancil is no longer

08:51AM 23 before you. This fact should not influence your verdict with

08:51AM 24 reference to the remaining defendant Michael J. Miske, and you

08:51AM 25 must base your verdict solely on the evidence relating to

08:51AM 1 Mr. Miske.

08:51AM 2 With that, Mr. Akina, is the government prepared with

08:51AM 3 its opening?

08:51AM 4 MR. AKINA: Yes, Your Honor.

08:51AM 5 THE COURT: All right. You may begin when ready.

08:51AM 6 MR. AKINA: The defendant used fear, violence, and

08:51AM 7 intimidation to get what he wanted. And what he wanted was

08:51AM 8 money, control, and revenge. For nearly two decades the

08:52AM 9 defendant Michael Miske and his associates committed numerous

08:52AM 10 crimes: Racketeering, obstruction of justice, kidnapping,

08:52AM 11 robberies, assaults, chemical attacks, murder for hire, and the

08:52AM 12 murder of the defendant's son's best friend Jonathan Fraser.

08:52AM 13 The defendant's criminal enterprise extended into the

08:52AM 14 business world and the underworld. He was at the top of it.

08:52AM 15 Now, I'm not going to go into every single crime that

08:52AM 16 the defendant and his associates committed over the years.

08:52AM 17 Instead, I'll give you an overview and outline, as the judge

08:52AM 18 just said, some of the crimes that you can expect to learn

08:52AM 19 about over the course of this trial.

08:52AM 20 Let's start with the business world. In addition or

08:52AM 21 as part of being the head of a criminal enterprise, the

08:53AM 22 defendant was also the head of several companies, many of them

08:53AM 23 under the Kama'aina brand name: Kama'aina Termite and Pest

08:53AM 24 Control, Kama'aina Holdings, Kama'aina Solar, Kama'aina

08:53AM 25 Plumbing, there are Hawaii Partners, Leverage Incorporated.

08:53AM 1 The defendant had some nightclubs: M Nightclub, Encore, The
08:53AM 2 Standard.

08:53AM 3 And in many of his business dealings, the defendant
08:53AM 4 and his associates used violence, intimidation, and fraud.
08:53AM 5 They also placed profits over customer safety. The defendant's
08:53AM 6 nightclubs, those were marked by violence and tax evasion. The
08:53AM 7 defendant and his thugs would assault, they would threaten
08:53AM 8 customers. You will learn that a simple dispute over a bar tab
08:53AM 9 coupled with some colorful language from a customer was met
08:54AM 10 with brutal violence.

08:54AM 11 On one occasion you'll learn that the defendant's own
08:54AM 12 brother, John Stancil, one of his enforcers, repeatedly kicked
08:54AM 13 a woman who was on the ground. A woman who was protecting her
08:54AM 14 friend from John Stancil and the defendant's thugs.

08:54AM 15 The evidence will also show that the defendant's
08:54AM 16 nightclubs were marked by tax evasion. The defendant skimmed
08:54AM 17 millions of dollars in profit, all to avoid paying taxes on
08:54AM 18 that.

08:54AM 19 The defendant didn't just victimize his own customers,
08:54AM 20 though. He also ordered chemical attacks on rival nightclubs
08:54AM 21 to drive business to his. Also to exact revenge. Leading up
08:54AM 22 to some of these chemical attacks you'll learn about a social
08:54AM 23 media post online. There was a post that was associated with
08:55AM 24 two rival nightclubs. At the time the defendant had an
08:55AM 25 interest in Encore, the Encore Nightclub. And this post from

08:55AM 1 the two -- associated with the two rival nightclubs had a
08:55AM 2 picture, a picture of a packed club. The words, "Can I get an
08:55AM 3 Encore? Do you want more?"
08:55AM 4 The defendant took that as a slight against the Encore
08:55AM 5 Nightclub. He took that as a personal affront. It was an
08:55AM 6 insult. It was public and something had to be done.
08:55AM 7 A few weeks later, the owner of one of those rival
08:55AM 8 nightclubs showed up at the Encore. He was wearing a Rolex
08:55AM 9 watch, a Rolex watch that looked similar to a watch that one of
08:55AM 10 the defendant's associates had lost years ago. That
08:55AM 11 associate's name was Jason Yokoyama. You'll hear about him
08:55AM 12 during the trial.
08:55AM 13 And so the defendant took that opportunity to get some
08:55AM 14 payback. He reached out to the owner of that rival nightclub.
08:56AM 15 His name was Brian Yoshida. He lured Mr. Yoshida into a
08:56AM 16 meeting under the guise of a business meeting. And this
08:56AM 17 meeting, it wasn't at the nightclub office. It was at the
08:56AM 18 defendant's office at Kama'aina Termite and Pest Control, one
08:56AM 19 of his businesses. And you're going to hear a lot about
08:56AM 20 Kama'aina Termite and Pest Control during this trial.
08:56AM 21 So Mr. Yoshida goes to meet with the defendant at his
08:56AM 22 office at night, after hours. And after Mr. Yoshida goes to
08:56AM 23 the office, one of the defendant's enforcers follows. So in
08:56AM 24 that room with the defendant, his enforcer, and Mr. Yoshida,
08:56AM 25 what happens next was a violent assault. Repeatedly struck on

08:56AM 1 the head. By the end of it, Mr. Yoshida's face looked like
08:56AM 2 hamburger meat according to one witness. Not surprisingly, a
08:56AM 3 few days later, Mr. Yoshida gave a watch to that associate of
08:57AM 4 the defendant's, to Jason Yokoyama.

08:57AM 5 The revenge didn't stop there. Shortly after that
08:57AM 6 assault on Mr. Yoshida, the defendant then ordered a chemical
08:57AM 7 attack to be carried out at Mr. Yoshida's nightclub. The
08:57AM 8 defendant used his cousin, one of his associates, to release a
08:57AM 9 chemical called chloropicrin into that rival nightclub at peak
08:57AM 10 hours. And chloropicrin is a chemical that's similar to tear
08:57AM 11 gas. You'll hear from witnesses that they felt the effects, a
08:57AM 12 burning sensation. People went for the exits. There was
08:57AM 13 panic. There was mayhem.

08:57AM 14 The next night the defendant ordered a second chemical
08:57AM 15 attack on that other rival nightclub that he associated with
08:57AM 16 that social media post. This time he used his brother, John
08:57AM 17 Stancil. John Stancil provided chloropicrin to another Miske
08:58AM 18 associate. That person went into the second nightclub,
08:58AM 19 released the chloropicrin. The same results, panic, mayhem.

08:58AM 20 The only difference is this second night the defendant
08:58AM 21 even drove by. He wanted to see his handiwork at play. You'll
08:58AM 22 learn that chloropicrin was so potent that one of the
08:58AM 23 associates who handled it, one of Miske's associates who handle
08:58AM 24 it, she sustained burns to her arms just from handling the
08:58AM 25 bottle that contained this chemical.

08:58AM 1 And where did the defendant get a chemical like this?

08:58AM 2 From Kama'aina Termite and Pest Control. It was a fumigation

08:58AM 3 and pest control business that used poison, they used

08:58AM 4 chemicals. You'll learn that's where he obtained access to it.

08:58AM 5 Some other things you'll learn about Kama'aina Termite

08:58AM 6 and Pest Control. They failed to comply with rules and

08:58AM 7 regulations. Rules and regulations that were designed to

08:58AM 8 protect consumers because of the chemicals that were being

08:59AM 9 handled. You'll learn that they lied about the use of that to

08:59AM 10 consumers, to customers, and to regulators, and they did that

08:59AM 11 to increase profits.

08:59AM 12 Another way you'll learn that the defendant made his

08:59AM 13 money was on the black market, the sale of illegal fireworks.

08:59AM 14 These weren't just fire crackers. They're not just sparklers.

08:59AM 15 These were commercial grade fireworks, aerials. The defendant

08:59AM 16 imported them from China, turned around and sold them on the

08:59AM 17 black market. He made millions of dollars doing that.

08:59AM 18 And you'll learn that these types of fireworks, the

08:59AM 19 sale of them, it's regulated. You need a permit typically.

08:59AM 20 And so to cover this up, the defendant and the associates stole

08:59AM 21 the identities of nearly 600 people right out of the phonebook,

08:59AM 22 right out of the Yellow Pages.

08:59AM 23 They fabricated sales documents to cover up their

08:59AM 24 sales on the black market. And then when regulators took a

09:00AM 25 closer look, the defendant faked a theft of some of his

09:00AM 1 inventory, all to justify the missing product that had been
09:00AM 2 sold on the black market.

09:00AM 3 Another one of his businesses, Hawaii Partners, that
09:00AM 4 was a business that the defendant used to buy used cars at
09:00AM 5 auction, flip them, sell them, usually on Craigslist. The
09:00AM 6 defendant you'll learn had a reputation at these auctions. He
09:00AM 7 would show up with some of his enforcers, his muscle. The
09:00AM 8 defendant would bid on cars. And because of his reputation,
09:00AM 9 people who knew that he was bidding, they wouldn't bid against
09:00AM 10 him. And that's because on occasion the people who bid against
09:00AM 11 the defendant, people who outbid the defendant, he would have
09:00AM 12 those people beaten sometimes. Revenge.

09:00AM 13 Now, where did the defendant learn how to use strong
09:01AM 14 arm tactics? Where did he learn how to impose his will on
09:01AM 15 others? Where did he get these enforcers, this muscle?
09:01AM 16 Earlier I mentioned the underworld. That's where.

09:01AM 17 You'll learn that the things that the defendant did in
09:01AM 18 the business world, those are things that he picked up from
09:01AM 19 years of terrorizing others in the underworld. He and his
09:01AM 20 associates, they committed other violent crimes: Assault,
09:01AM 21 kidnapping, robberies, drug dealing.

09:01AM 22 That's another way that the defendant made money, drug
09:01AM 23 dealing. You'll hear about a particular drug deal. This one
09:01AM 24 didn't work out so well for the defendant. He bankrolled a
09:01AM 25 10-kilogram cocaine deal. He sent an associate, Wayne Miller,

09:01AM 1 with a suitcase full of cash, almost \$300,000. He sent that
09:01AM 2 associate to California to buy 10 kilograms of cocaine. That's
09:01AM 3 over 20 pounds of cocaine. Law enforcement caught that
09:02AM 4 associate, took the money, took the drugs. Wayne Miller came
09:02AM 5 back to Hawaii empty-handed. No money, no drugs.

09:02AM 6 The defendant was suspicious. He suspected Wayne
09:02AM 7 Miller was cooperating against him, was an informant. And so
09:02AM 8 what the defendant did was he had his attorney at the time
09:02AM 9 question Wayne Miller, figure out if this is a person that
09:02AM 10 could be trusted. The evidence is going to show that the
09:02AM 11 defendant used everything at his disposal, even legal counsel
09:02AM 12 at the time, to further his criminal interests.

09:02AM 13 Robberies were also commonplace among the defendant's
09:02AM 14 associates. The evidence will show that the defendant started
09:02AM 15 out in the late '90s robbing people. He would recruit young
09:03AM 16 boys, usually from his neighborhood, Waimanalo. He would take
09:03AM 17 them in, he would groom them, he would provide for them, and
09:03AM 18 then he would lead them to a life of crime.

09:03AM 19 Typically they would target drug dealers. That's
09:03AM 20 because drug dealers have drugs. They have drug money. And
09:03AM 21 when drug dealers get robbed of their drugs, they're not going
09:03AM 22 to go to the police usually to report that their drugs were
09:03AM 23 stolen. The defendant taught those that he took under his wing
09:03AM 24 how to commit crimes and do them smarter.

09:03AM 25 Eventually the defendant, his brother John Stancil,

09:03AM 1 came in and took over coordinating robberies. The target pool
09:03AM 2 expanded. Now they used the internet. They stalked people
09:03AM 3 online. They identified targets, people who put up pictures of
09:03AM 4 themselves wearing chains, gold chains, or money, stacks of
09:03AM 5 money. They would find those people. They would follow them.
09:04AM 6 They would rob them.

09:04AM 7 With drug dealers they would reach out, they would set
09:04AM 8 up a fake deal, rob those drug dealers of their cash, of their
09:04AM 9 drugs. And some of the robberies that you're going to hear
09:04AM 10 about during this trial, they were violent. Extremely violent.
09:04AM 11 Multiple men, masked, guns. Some of them were home invasions.
09:04AM 12 And this was violent because the defendant chose violent
09:04AM 13 people.

09:04AM 14 The defendant's violent network was also for hire. On
09:04AM 15 one occasion the defendant was hired to collect a debt. And so
09:04AM 16 the defendant ordered the kidnapping of 72-year-old Robert Lee,
09:04AM 17 an accountant. The defendant's associates tracked Mr. Lee,
09:05AM 18 surveilled him, and they lured him out. They set up a meeting
09:05AM 19 under the guise of a business meeting, potential clients.

09:05AM 20 They met with Mr. Lee, posed as police, tried to
09:05AM 21 arrest him. He resisted. They forced him into a car, put a
09:05AM 22 bag over his head, restrained him, drove him around, and
09:05AM 23 assaulted him. They demanded money from him. Where is the
09:05AM 24 money? Give us the money. Give us the money or we'll kill
09:05AM 25 you. They threatened his life. For this, the defendant was

09:05AM 1 paid nearly \$100,000.

09:05AM 2 Some of the violence wasn't motivated by money. The
09:05AM 3 nightclub attacks, the assault on Mr. Yoshida, some of the
09:05AM 4 violence, that was retaliation. You'll learn that the
09:05AM 5 defendant regularly retaliated against those who disrespected
09:06AM 6 him or disrespected someone that he knew.

09:06AM 7 One example is Tim Goodrich. Tim Goodrich was the
09:06AM 8 owner of a tattoo shop, and Tim Goodrich had a rivalry with
09:06AM 9 another owner of another tattoo shop. And that rival owner was
09:06AM 10 friends with the defendant. And so the defendant ordered an
09:06AM 11 assault, a hit on Mr. Goodrich, his place of work in the middle
09:06AM 12 of the day.

09:06AM 13 And one of the boys who were sent -- the only boy who
09:06AM 14 was sent to actually carry out this assault, his name was
09:06AM 15 Dayson Kaae. He was one of those who were being groomed. He
09:06AM 16 went into that shop with John Stancil, the brother, and Dayson
09:06AM 17 Kaae attacked Tim Goodrich. As it turned out, Tim Goodrich was
09:06AM 18 a former Marine, he defended himself. He stabbed Dayson Kaae
09:06AM 19 in the process in self-defense. Dayson Kaae fled. John
09:07AM 20 Stancil fled. They got into a waiting getaway car. Other
09:07AM 21 Miske associates were in there. Miske's associates abandoned
09:07AM 22 Dayson Kaae, still bleeding, on the side of the road. He died
09:07AM 23 a few hours later.

09:07AM 24 The defendant also ordered shootings and put out
09:07AM 25 contracts. Murder contracts. One shooting that he ordered,

09:07AM 1 that was an attempted shooting of an individual who insulted
09:07AM 2 him on social media. Social media posts. He ordered an
09:07AM 3 attempted shooting.

09:07AM 4 On another occasion the defendant issued a murder
09:07AM 5 contract for an individual who he thought was cooperating
09:07AM 6 against him. Someone who he thought was working with the
09:07AM 7 government. This particular murder contract was accepted by an
09:08AM 8 individual named Lance Bermudez. And you'll learn that Lance
09:08AM 9 Bermudez, he had a specialty. He specialized in shootings, he
09:08AM 10 specialized in car thefts. And car thefts are important
09:08AM 11 because you steal cars to commit shootings. That's why he was
09:08AM 12 picked.

09:08AM 13 Now, how much is a life worth? You'll learn that for
09:08AM 14 this individual, the defendant decided that his life was worth
09:08AM 15 \$60,000. Another example, the defendant put out another
09:08AM 16 contract on one of his girlfriends. Why? Because she knew too
09:08AM 17 much.

09:08AM 18 You'll learn that the defendant often spoke in code
09:08AM 19 with his associates. He would use analogies, baseball, first
09:08AM 20 base, second base, home run. He would use percentages,
09:08AM 21 20 percent, all the way. He used code to describe the level of
09:09AM 22 violence that he wanted to see done. You'll learn that first
09:09AM 23 base, that's an assault. Second base, put them in the
09:09AM 24 hospital. Third base could be a coma. A home run, that's
09:09AM 25 murder. And you'll hear about the home runs that the defendant

09:09AM 1 ordered associates to carry out. And not all of them were
09:09AM 2 carried out. In fact, most of them, thankfully, were not. But
09:09AM 3 that's what he did. That's how he responded.

09:09AM 4 Some of the crimes you'll hear about may at first seem
09:09AM 5 a little disconnected, but at the core of it all, the one
09:09AM 6 constant was one man, the defendant. He was the head of his
09:09AM 7 enterprise. He was the head of his enterprise in the business
09:09AM 8 world and the underworld. And because of that, we've called
09:09AM 9 that enterprise the Miske Enterprise.

09:09AM 10 Now, during jury selection we talked to some of you
09:10AM 11 about what an enterprise is, about racketeering, about
09:10AM 12 conspiracy. And "enterprise," that's a term that comes from
09:10AM 13 the RICO statute: Racketeer Influenced and Corrupt
09:10AM 14 Organizations Act. Racketeering. This is a RICO case. And
09:10AM 15 Count 1 charges a racketeering conspiracy. Some of you may
09:10AM 16 recall a conspiracy is just an agreement, a criminal agreement
09:10AM 17 between two or more people to commit a crime and do something
09:10AM 18 in furtherance of that. The crime is the agreement.

09:10AM 19 In this case the agreement is to engage in the affairs
09:10AM 20 of Miske's criminal enterprise. At the end of the trial the
09:10AM 21 judge is going to give you a full definition of these terms.
09:10AM 22 But for an enterprise, generally it's just a group of people.
09:10AM 23 It's a group of people who have associated together for some
09:10AM 24 common purpose, like Miske Enterprise, to engage in a course of
09:11AM 25 conduct over a period of time, furthering the purposes, the

09:11AM 1 interests of that enterprise.

09:11AM 2 You'll learn that an enterprise, it doesn't need to be
09:11AM 3 formal. It doesn't need to be registered. It doesn't have to
09:11AM 4 even have a name or a title. It doesn't have to have a
09:11AM 5 hierarchy. It doesn't have to look like a gang. It doesn't
09:11AM 6 have to look like a corporate entity. It could be a loose
09:11AM 7 association of individuals, as long as they have that common
09:11AM 8 purpose.

09:11AM 9 You'll learn that there were many purposes for Miske's
09:11AM 10 enterprise. They wanted to profit, make money, increase their
09:11AM 11 reputation, the reputation to be feared, to not be messed with.

09:11AM 12 Another purpose was to look out for other associates,
09:11AM 13 protect them from retaliation, protect them from law
09:11AM 14 enforcement. In short, the purpose was to enrich the members
09:11AM 15 of the enterprise. That's the defendant, that's his
09:12AM 16 associates.

09:12AM 17 Now, most of the members, they carried out robberies
09:12AM 18 and assaults for money or favors, gifts that the defendant
09:12AM 19 might give them. Others did it to increase their own standing
09:12AM 20 within the enterprise. How they looked to the defendant and
09:12AM 21 others. Tough guy.

09:12AM 22 You'll learn that nobody profited more, no one
09:12AM 23 benefitted more than the defendant. He had multiple streams of
09:12AM 24 illegal income: Kidnapping, fireworks on the black market,
09:12AM 25 drugs, tax evasion, fraud. In all, the defendant accumulated

09:12AM 1 millions of dollars. Luxury cars, artwork, a \$13 million home
09:12AM 2 in Portlock. And he had a reputation that caused him to be
09:12AM 3 feared.

09:12AM 4 The defendant and those he involved, those he
09:13AM 5 associated with were also organized. They didn't have an
09:13AM 6 organizational chart, there were no official titles, but
09:13AM 7 everybody had a role to play. The defendant, he was at the
09:13AM 8 top. He was the leader. There were enforcers. There was
09:13AM 9 muscle, muscle like John Stancil. There were other enforcers.
09:13AM 10 Some of these enforcers had specialties. Some of them he
09:13AM 11 knew -- the defendant knew that they were good for assaults.
09:13AM 12 Others he could rely on to go all the way. A home run.

09:13AM 13 And you'll learn that it was important to the
09:13AM 14 defendant to have in his words a full bench, a full bench of
09:13AM 15 people that he could call on when needed.

09:13AM 16 There were also people in the business world, people
09:13AM 17 who helped him facilitate financial crimes, tax fraud, tax
09:13AM 18 evasion.

09:13AM 19 You'll also learn that the defendant and his
09:13AM 20 associates, they associated with each other long enough to
09:13AM 21 commit certain racketeering acts. And those are just
09:13AM 22 categories of crimes, crimes like kidnapping, like fraud, like
09:14AM 23 murder for hire, and like murder.

09:14AM 24 I'm going to talk about murder for a bit. It's clear
09:14AM 25 I think by now that this case is not about any just -- any one

09:14AM 1 crime. It extends beyond that. But several of the charges in
09:14AM 2 this case revolve around the kidnapping and murder of Jonathan
09:14AM 3 Fraser in July 30th, 2016.

09:14AM 4 Now, who is Jonathan Fraser? He was Caleb Miske's
09:14AM 5 son -- I mean Caleb Miske's friend. And they were best
09:14AM 6 friends. Caleb Miske was the defendant's only son. Caleb
09:14AM 7 Miske was married to a woman named Delia Fabro-Miske. Delia
09:14AM 8 Fabro-Miske is the defendant's daughter-in-law.

09:14AM 9 You'll learn that Caleb and Jonathan, they were very
09:15AM 10 close, and that the defendant didn't like Jonathan Fraser. The
09:15AM 11 defendant thought Jonathan Fraser was a bad influence on his
09:15AM 12 son. The defendant wanted to kill Jonathan Fraser. And it's
09:15AM 13 true, Jonathan Fraser, he wasn't a perfect person. You'll
09:15AM 14 learn that two years before he disappeared, in 2014 Jonathan
09:15AM 15 Fraser stole a watch, a Rolex watch that happened to belong to
09:15AM 16 the defendant.

09:15AM 17 And in response, the defendant assembled a team of
09:15AM 18 people, a team to find the watch, find Jonathan Fraser, and
09:15AM 19 assault him. The defendant ordered them to go 20 percent. Not
09:15AM 20 all the way. Not a home run. Eventually the defendant's
09:15AM 21 associates caught up to Jonathan Fraser, they found him, they
09:15AM 22 assaulted him, they robbed him of a chain that he was wearing.
09:15AM 23 That was 2014.

09:15AM 24 The next year, 2015, at the end of it, Jonathan Fraser
09:16AM 25 and Caleb Miske were driving together, and they got into a very

09:16AM 1 serious car accident. Caleb was the driver, and Jonathan was
09:16AM 2 the passenger. The fire department had to pull Caleb Miske out
09:16AM 3 of the driver's seat of the wreckage. Both boys went to the
09:16AM 4 hospital. Jonathan Fraser made it out. Caleb Miske did not.

09:16AM 5 In March of 2016, Caleb Miske passed away. The
09:16AM 6 defendant blamed Jonathan Fraser for the death of his son
09:16AM 7 Caleb. So if the price of stealing a watch was an assault,
09:16AM 8 then there could be only one price to pay for the death of the
09:16AM 9 defendant's son. A life for a life.

09:16AM 10 And it wasn't just about revenge for the defendant.
09:17AM 11 This was about reputation. The defendant's reputation. That's
09:17AM 12 because Jonathan Fraser, he denied being the driver. And when
09:17AM 13 Jonathan Fraser denied being the driver, and Jonathan Fraser
09:17AM 14 didn't come to visit Caleb in the hospital, the defendant took
09:17AM 15 that as a personal insult, an affront to his reputation.
09:17AM 16 Something had to be done. And so the defendant planned,
09:17AM 17 schemed, conspired with others to murder Jonathan Fraser. In
09:17AM 18 his words, "The kid's got to go."

09:17AM 19 You're going to hear from Wayne Miller, one of the
09:17AM 20 defendant's associates. He was one of the defendant's
09:17AM 21 enforcers. He was one of the defendant's confidants. Wayne
09:17AM 22 Miller is going to tell you about the defendant's many
09:17AM 23 different plans to kill Jonathan Fraser. And Wayne Miller knew
09:18AM 24 about these multiple plans because the defendant asked Wayne
09:18AM 25 Miller multiple times to kill Jonathan Fraser. He will tell

09:18AM 1 you that the defendant said things to him to the effect of, I
09:18AM 2 would do the same for you. Do what you need to do. The kid's
09:18AM 3 got to go.

09:18AM 4 And as part of these multiple plans that the defendant
09:18AM 5 had, he had people acquire things. Things like chicken wire,
09:18AM 6 rope, cars, guns. Usually from sources that couldn't be
09:18AM 7 traced. The defendant even went out and bought a boat, notably
09:18AM 8 it was called the Painkiller. That was part of one of his
09:18AM 9 plans, possible plans to kill Jonathan Fraser.

09:18AM 10 The defendant was careful. He was concerned about
09:18AM 11 getting caught. He wrongly believed, as he told one associate,
09:19AM 12 "No body, no case." That's what the defendant thought.

09:19AM 13 So first, the plan ultimately was to lure Jonathan
09:19AM 14 Fraser in and set him up. Just like the robberies, just like
09:19AM 15 Mr. Yoshida, just like the kidnapping. He wanted to lure him
09:19AM 16 in. And he lured him in to create that false sense of
09:19AM 17 security. And so the defendant apologized to Jonathan Fraser.
09:19AM 18 Publicly he forgave Jonathan Fraser, all to create that false
09:19AM 19 sense of security.

09:19AM 20 In addition to that, the defendant had Delia
09:19AM 21 Fabro-Miske, Caleb's widow, his daughter-in-law, he had Delia
09:19AM 22 Fabro-Miske reopen lines of communication with Jonathan Fraser
09:19AM 23 and his girlfriend Ashley Wong. And you'll learn that Jonathan
09:19AM 24 Fraser and Ashley Wong and Caleb Miske and Delia Fabro-Miske,
09:19AM 25 the four of them, those two couples, they had been friends, but

09:20AM 1 they had stopped talking after the accident, after Caleb was in
09:20AM 2 the hospital.

09:20AM 3 So the defendant had Delia Fabro-Miske reach out to
09:20AM 4 Jonathan Fraser and Ashley Wong. The defendant paid for
09:20AM 5 dinners with Jonathan and Ashley, concerts, manicures. The
09:20AM 6 defendant even bought a tribute car in memory of Caleb, and let
09:20AM 7 Jonathan Fraser use that car.

09:20AM 8 Eventually the defendant arranged for Jonathan Fraser
09:20AM 9 and his girlfriend to move in with Delia Fabro-Miske at a
09:20AM 10 property in Hawaii Kai. Delia's name was on the lease. The
09:20AM 11 defendant was paying the rent.

09:20AM 12 And so they moved in. Jonathan and Ashley moved in
09:20AM 13 with the defendant's daughter-in-law. Two weeks after they
09:20AM 14 moved in, the defendant and Delia Fabro-Miske separated
09:21AM 15 Jonathan and Ashley. And that's important. It's important
09:21AM 16 because Jonathan and Ashley, you'll learn they were
09:21AM 17 inseparable. The defendant complained that he could never get
09:21AM 18 Jonathan Fraser alone because Ashley was always there.

09:21AM 19 Delia Fabro-Miske invited Ashley Wong to a spa day.
09:21AM 20 This was July 30th, 2016, the day Jonathan Fraser disappeared.
09:21AM 21 It was the first time and last time she invited Ashley Wong to
09:21AM 22 a spa day. And the spa day was on the other side of the island
09:21AM 23 at Aulani.

09:21AM 24 So with Jonathan and Ashley physically separated, and
09:21AM 25 in addition to that, Jonathan's phone service was effectively

09:21AM 1 cut off. Not the phone itself, but you'll learn that Jonathan,
09:21AM 2 he didn't have a lot of money, so his phone needed Wi-Fi to
09:21AM 3 work. On July 30th, 2016, guess what wasn't working at the
09:21AM 4 Hawaii Kai residence? The internet.

09:22AM 5 And so with the two, Jonathan and Ashley, physically
09:22AM 6 separated, his phone not working, Jonathan Fraser was
09:22AM 7 effectively isolated from the rest of the world. He was never
09:22AM 8 seen or heard from again.

09:22AM 9 You'll learn that that night, that same night, the
09:22AM 10 defendant had someone pay Lance Bermudez to get rid of a white
09:22AM 11 Sienna van that was parked near that Hawaii Kai residence where
09:22AM 12 Jonathan and Ashley had been staying. This is that same Lance
09:22AM 13 Bermudez who had that murder contract to kill someone that the
09:22AM 14 defendant thought was an informant. In other words, this was
09:22AM 15 the same Lance Bermudez that the defendant trusted to do
09:22AM 16 important things.

09:22AM 17 And so the defendant had Lance Bermudez steal that
09:22AM 18 car, drive it to the other side of the island, and get rid of
09:22AM 19 it. Burn it, torch it. It was engulfed in flames, along with
09:23AM 20 anything inside of it. And you'll learn that that's important
09:23AM 21 for a couple of reasons. One, that's how you get rid of
09:23AM 22 evidence, burn things. You'll learn that that's how Lance
09:23AM 23 Bermudez got rid of things, he would burn cars.

09:23AM 24 You'll also learn that this wasn't any van randomly
09:23AM 25 parked on the side of the road. This was one of those vans

09:23AM 1 that were purchased as part of the defendant's plans to murder
09:23AM 2 Jonathan Fraser. And as part of that plan, this van was
09:23AM 3 purchased and registered in a fake name. Conceal the identity
09:23AM 4 of the buyer.

09:23AM 5 After the spa day, Ashley Wong was distraught. She
09:23AM 6 quickly reported Jonathan Fraser's disappearance to the police.
09:23AM 7 There were missing persons posters. It made the news.

09:23AM 8 And in the following days, the defendant made some
09:23AM 9 admissions to close associates. To Wayne Miller, he told him
09:24AM 10 that he had killed Jonathan Fraser. He admitted that to him.
09:24AM 11 He told him, You would be proud of me. This was the same Wayne
09:24AM 12 Miller that he had planned with to kill Jonathan Fraser.

09:24AM 13 To another associate, Preston Kimoto, he told him, You
09:24AM 14 didn't think anything would not happen?

09:24AM 15 And then about a week after Jonathan Fraser
09:24AM 16 disappeared, the defendant had Jonathan's girlfriend Ashley
09:24AM 17 Wong removed from that Hawaii Kai residence. No more spa days,
09:24AM 18 no more dinners, no more Jonathan Fraser.

09:24AM 19 In this trial you're not going to learn what happened
09:24AM 20 to the body, because the body was never recovered. Jonathan
09:24AM 21 Fraser was never found. Nearly eight years later, to this day
09:25AM 22 his family hasn't heard from him.

09:25AM 23 And at the end of this trial, after the judge gives
09:25AM 24 you instructions, you're not going to be asked to decide what
09:25AM 25 happened to Jonathan Fraser's body. You're going to be asked

09:25AM 1 to decide several things, including was he kidnapped, was he
09:25AM 2 murdered, did the defendant do it. That's what you have to
09:25AM 3 decide. Not what happened to the body.

09:25AM 4 And at the end of this trial, you'll know beyond a
09:25AM 5 reasonable doubt that the defendant conspired with others and
09:25AM 6 did kidnap and kill Jonathan Fraser.

09:25AM 7 I'm going to talk about control over this enterprise.

09:25AM 8 The defendant was in control of his enterprise. He had his
09:25AM 9 associates do things. They were careful. They didn't want to
09:25AM 10 leave behind evidence. So he had his associates use multiple
09:26AM 11 phones, burner phones. He would swap them out frequently.
09:26AM 12 They used burner cars. Cars that you get to commit a crime,
09:26AM 13 and then after you commit the crime, you get rid of it. You
09:26AM 14 burn it.

09:26AM 15 He and his associates used GPS trackers to track
09:26AM 16 people that they didn't trust, maybe a girlfriend, or track
09:26AM 17 potential targets, robbery targets. He would put those
09:26AM 18 trackers on their cars, follow them.

09:26AM 19 He had associates communicate using encrypted
09:26AM 20 messaging apps, because the defendant thought that if he used
09:26AM 21 those apps, law enforcement can't read those messages. What he
09:26AM 22 didn't realize was that if law enforcement sees that actual
09:26AM 23 phone, sometimes they could read and access those encrypted
09:26AM 24 messages. And you'll see some of those messages, the
09:26AM 25 defendant's own words, during this trial.

09:26AM 1 The defendant had his associates, he told them not to
09:26AM 2 put important things in writing. That would be discussed in
09:27AM 3 person. And on occasion in person, he would write messages on
09:27AM 4 an erasable board, no trace.

09:27AM 5 Bank transactions would be structured to avoid the
09:27AM 6 scrutiny of the IRS. And when some of the associates of the
09:27AM 7 defendants got arrested, the defendant would send a lawyer. He
09:27AM 8 would hire someone, send them out, fight the charges for them.

09:27AM 9 The defendant referred to this lawyer as a doctor, that person
09:27AM 10 was sent to fix things. That benefitted the associates, to
09:27AM 11 help them out, but it also helped the defendant and made it
09:27AM 12 less likely that his associates, his people would talk to the
09:27AM 13 police.

09:27AM 14 The defendant also frequently tried to gain leverage
09:27AM 15 over other people. Leverage was important to him. One of the
09:27AM 16 his companies was named Leverage Incorporated. And leverage
09:27AM 17 could be gained through favors, through money, through gifts.
09:27AM 18 Some of those favors, favors like free fumigation services for
09:28AM 19 the city and county.

09:28AM 20 The point of leverage was that when the defendant
09:28AM 21 needed something, he had someone who owed him, someone he could
09:28AM 22 lean on. Sometimes the defendant gained leverage through job
09:28AM 23 offers. You'll learn that he employed those loyal to him at
09:28AM 24 his businesses. Other times through his connections he would
09:28AM 25 place people in other industries. Industries like the movies,

09:28AM 1 industries like at the docks. You'll learn that at the docks,
09:28AM 2 that was pretty coveted. That's because you could make a
09:28AM 3 pretty good amount of money with just a high school education.

09:28AM 4 You'll learn that one day someone got in the way of
09:28AM 5 the defendant's ability to place his people at the docks, his
09:28AM 6 ability to get leverage. And you'll learn about the
09:28AM 7 defendant's plans to intimidate and kill that person, a leader
09:28AM 8 in the longshoremen's union.

09:29AM 9 The evidence will show that the defendant was a master
09:29AM 10 manipulator. He would kill. He was willing to do that in
09:29AM 11 order to maintain his power.

09:29AM 12 Now, to get his way, the defendant would frequently
09:29AM 13 revert to threats. That was in the business world, that was in
09:29AM 14 the underworld. And you'll hear testimony from some of the
09:29AM 15 people that he threatened over the years. He told them things
09:29AM 16 like, It's not like the mainland. People disappear here. I'll
09:29AM 17 put you in the ground. I know people. You don't know who
09:29AM 18 you're dealing with. Do you know who I am?

09:29AM 19 It didn't matter if it was a customer, if it was a
09:29AM 20 stranger, if it was a police officer, the defendant embraced
09:29AM 21 his reputation for violence and retribution. He wielded that
09:30AM 22 reputation like a baseball bat.

09:30AM 23 Now, in 2020 the defendant was arrested in this case.
09:30AM 24 But before his arrest he started planning. One of those plans
09:30AM 25 was to shift, on paper at least, the ownership of his various

09:30AM 1 companies into the name of his daughter-in-law Delia
09:30AM 2 Fabro-Miske. And that makes sense because Delia Fabro-Miske
09:30AM 3 had a child. The defendant's grandchild. Caleb's child.
09:30AM 4 Another part of his plan -- another plan that he had
09:30AM 5 was to gather reference letters. Letters that he could use in
09:30AM 6 the event that he was arrested to convince a judge to let him
09:30AM 7 stay out of jail while waiting for this trial to start. And
09:30AM 8 that's what he did, he collected reference letters, character
09:30AM 9 letters.
09:30AM 10 But then he altered one of those letters. He
09:30AM 11 fabricated another letter. And then after he was arrested, he
09:31AM 12 had those two false letters submitted to a judge. The evidence
09:31AM 13 is going to show that the defendant planned to and tried to
09:31AM 14 defraud others, even within the judicial system, all in order
09:31AM 15 to benefit himself. And he did that even after he had gotten
09:31AM 16 caught.
09:31AM 17 Now, these crimes, they didn't happen in a vacuum.
09:31AM 18 This wasn't a one-man Miske Enterprise show. There were other
09:31AM 19 people involved. There were people who committed crimes with
09:31AM 20 the defendant. There were people who committed crimes on the
09:31AM 21 defendant's behalf. These were people who conspired with the
09:31AM 22 defendant.
09:31AM 23 And you're going to hear from a number of those
09:31AM 24 people. They're going to testify at this trial. You'll learn
09:31AM 25 that they took responsibility for their actions, they admitted

09:32AM 1 to crimes that they committed, and they'll tell you what they
09:32AM 2 did. They'll also tell you what the defendant did.
09:32AM 3 You've heard some of their names already. I'm going
09:32AM 4 to talk about just a few of them.
09:32AM 5 First is Wayne Miller. That confidant, that enforcer,
09:32AM 6 the one that the defendant asked to kill Jonathan Fraser.
09:32AM 7 Wayne Miller got his start early on. He joined Miske early on.
09:32AM 8 Miske took him in. He was one of the people who were groomed.
09:32AM 9 It started off with assaults and robberies. Then it graduated
09:32AM 10 to kidnapping and murder contracts.
09:32AM 11 Another person, Jake Smith, he was another enforcer.
09:32AM 12 Jake Smith was a martial artist. He would travel the country
09:32AM 13 nationally to compete. He was brought on to assault people.
09:32AM 14 You'll learn that Jake Smith had a list. Not a physical list,
09:33AM 15 but there was a list over the years of names of people that the
09:33AM 16 defendant gave Jake Smith that he wanted to see assaulted.
09:33AM 17 Jake Smith was involved in some of the chemical
09:33AM 18 attacks you'll hear about. He was present, he was in that
09:33AM 19 getaway car of that assault at that tattoo shop where Dayson
09:33AM 20 Kaae died. Jake Smith was that enforcer who followed
09:33AM 21 Mr. Yoshida into the room at Kama'aina Termite and Pest
09:33AM 22 Control.
09:33AM 23 And you'll learn that Wayne Miller and Jake Smith and
09:33AM 24 others will testify. Some of them, they have criminal pasts.
09:33AM 25 They have committed crimes in the past. Some of them were even

09:33AM 1 gang members. And that also makes sense because the defendant
09:33AM 2 used these violent people to do violent things.

09:33AM 3 Another person you'll hear from, Preston Kimoto. He
09:34AM 4 was involved with the kidnapping of that accountant, Mr. Lee.
09:34AM 5 Preston Kimoto worked on the business side of things. He
09:34AM 6 worked primarily in the fumigation businesses for the
09:34AM 7 defendant, and he'll tell you about misuse of chloropicrin,
09:34AM 8 he'll tell you about fraud, violence, intimidation that was
09:34AM 9 used all to further the defendant's business, his criminal
09:34AM 10 interests.

09:34AM 11 A word on logistics. You've all seen the witness
09:34AM 12 list. Hundreds of potential witnesses. Just keep in mind that
09:34AM 13 some witnesses, they might know something about different
09:34AM 14 crimes that happened at different points in time. So one
09:34AM 15 witness may testify about something that happened in 2017.
09:34AM 16 That same person may testify then again about something that
09:34AM 17 happened in 2005.

09:35AM 18 The point is that the evidence in this case, it's not
09:35AM 19 going to come out in perfect chronological order. That's not
09:35AM 20 how it works. But by the end of this case, you'll be able to
09:35AM 21 put all those pieces of evidence together and you'll be left
09:35AM 22 with a picture of Miske's enterprise.

09:35AM 23 The defendant used fear, violence, and intimidation to
09:35AM 24 get what he wanted. And at the end of this trial, after you've
09:35AM 25 seen and heard the evidence, one of my colleagues are going to

09:35AM 1 come before you and they're going to ask you to hold the
09:35AM 2 defendant responsible for the crimes that he committed in
09:35AM 3 trying to get what he wanted. At the end of this trial we are
09:35AM 4 going to ask you to return a verdict of guilty on all counts.
09:35AM 5 Thank you.

09:36AM 6 THE COURT: All right, Mr. Akina, thank you.
09:36AM 7 So ladies and gentlemen, I promised the defense that
09:36AM 8 we would take a short break. Even though Mr. Akina did not use
09:36AM 9 all of the time allotted, we will go ahead and take that break
09:36AM 10 now, and we will then resume when either Mr. Kennedy or
09:36AM 11 Ms. Panagakos is ready. So I anticipate that will be 15 or
09:36AM 12 20 minutes.

09:36AM 13 As we go to break, and this is something that I
09:36AM 14 apologize, but you're going to hear all too often during the
09:36AM 15 course of the time that we're together, you're going to hear
09:36AM 16 the same admonitions. And the reason is it's not because I
09:36AM 17 don't think you understand it. It's to emphasize the
09:36AM 18 importance of these rules that I know you already know. We've
09:36AM 19 given them to you in writing, and I gave them to you when we
09:36AM 20 were last together a week ago during preliminary jury
09:36AM 21 instructions. That's how important they are.

09:36AM 22 So please adhere to these. They are the following:
09:37AM 23 Please do not discuss the substance of this case with
09:37AM 24 anyone, including one another. Especially when you're back in
09:37AM 25 rooms waiting for court to begin, please do not discuss the

09:37AM 1 substance of this case with anyone, your loved ones, close
09:37AM 2 friends or relatives, or one another until I advise otherwise.
09:37AM 3 Do not conduct any independent investigation into the
09:37AM 4 facts, circumstances or persons involved in this case.
09:37AM 5 And finally, do not access any media or other accounts
09:37AM 6 of this case that maybe out there, particularly via social
09:37AM 7 media or the internet, since that is, as you know, how most of
09:37AM 8 us get our news today. But it extends beyond that, radio
09:37AM 9 reports, print media, TV segments, please do not access any
09:37AM 10 media or other accounts of this case out there.
09:37AM 11 Why? Because I emphasized to you all last week,
09:37AM 12 right, the only place that you can learn about this case from
09:38AM 13 this point forward is where? The four corners of this
09:38AM 14 courtroom and nowhere else.
09:38AM 15 So let's take about a 15- or 20-minute break.
10:00AM 16 (A recess was taken from 9:38 a.m. to 10:00 a.m.)
10:00AM 17 THE COURT: All right. Back from our first morning
10:00AM 18 break. The record should reflect the return of all 18 jurors,
10:00AM 19 the parties, as well as their lawyers.
10:00AM 20 Mr. Kennedy, opening statement, I assume you're ready
10:00AM 21 for. And you're already walking up to the stand, so you may
10:00AM 22 begin when you're ready.
10:00AM 23 MR. KENNEDY: I am, Your Honor.
10:00AM 24 Good morning, Your Honors. Each and every one of you
10:00AM 25 sit now as a judge. You don't wear the black robe that Judge

10:00AM 1 Watson has, but each of you now sit as the judges of the facts
10:00AM 2 in this case. And each of you have the honor to decide this
10:01AM 3 case not on the words of us but on the words of evidence.
10:01AM 4 And the only folk who are equal to you in this
10:01AM 5 courtroom, which I have the honor of representing, is Michael
10:01AM 6 Miske. And I'm going to show you what his life has been about.
10:01AM 7 I'm going to tell you what his life is about. I'm going to
10:01AM 8 talk to you -- as the judge said, you don't live in this world.
10:01AM 9 So I'm going to talk to you about the world that comes inside
10:01AM 10 this courtroom when people take the stand and have something to
10:01AM 11 gain, and also when they have something that the government
10:01AM 12 doesn't want you to know.
10:01AM 13 I'm going to go through the counts with you, and at
10:01AM 14 the end of my talk today, I'm going to ask you at the end of
10:02AM 15 this case to return a not guilty verdict on every count,
10:02AM 16 because I have the honor of representing this man. So let's
10:02AM 17 get started.
10:02AM 18 There are big questions that need to be asked here.
10:02AM 19 First big question, Kama'aina Termite and Pest Control, front
10:02AM 20 company or legitimate company? Don't take my word. I'm going
10:02AM 21 to show you. There are 18 of you, and I'm going to show you
10:02AM 22 18, each one, I will give to you a project. The people of
10:02AM 23 Hawaii have entrusted Michael Miske and Kama'aina Termite and
10:02AM 24 Pest Control, even if the federal government has not.
10:02AM 25 Let's start. Iconic places, innovative projects,

10:02AM 1 cultural treasures. That's what Kama'aina Termite and Pest
10:03AM 2 Control is known for.
10:03AM 3 Let's get started. Mike Miske took on the riskiest
10:03AM 4 projects, the projects that no one else would try. Waikiki
10:03AM 5 Shell, 2007.
10:03AM 6 (News segment was played for the jury.)
10:03AM 7 Innovative projects. Iconic places. Cultural
10:03AM 8 treasures.
10:03AM 9 (News segment was played for the jury.)
10:08AM 10 Kawaiahā'o Church, 2002. That's what Michael Miske
10:08AM 11 was doing with his time.
10:08AM 12 Polynesian Cultural Center, 2002, 2012, 2020. Some of
10:08AM 13 you may have been there to see it. It's numerous buildings.
10:08AM 14 The fumigation of all the buildings would start on Sunday -- on
10:08AM 15 Saturday at nighttime, and they would do it over the night so
10:08AM 16 that they would be ready to go on Monday through so that people
10:08AM 17 could come.
10:08AM 18 So these are the sites.
10:09AM 19 Can you flip it, Ashley? Thank you.
10:09AM 20 We lost connection again. Thank you.
10:10AM 21 These are some of the buildings that are inside.
10:10AM 22 We lost it again. Are we good? Okay.
10:10AM 23 Different shapes, innovative projects, cultural
10:10AM 24 treasures. Working at night to get the job done. Family
10:11AM 25 business. Built from the ground up. Ninety to a hundred

10:11AM 1 workers. Big jobs, the hardest jobs on the island. The
10:11AM 2 Polynesian Cultural Center trusted Michael Miske.
10:11AM 3 Family business. Mike and his daughter-in-law Delia.
10:11AM 4 King Kamehameha IV Hotel on the Big Island.
10:11AM 5 Did we lose sound now?
10:12AM 6 (News segment was played for the jury.)
10:12AM 7 Innovative projects, cultural treasures, iconic
10:12AM 8 places.
10:12AM 9 Poinciana Manor, Kailua.
10:12AM 10 (News segment was played for the jury.)
10:14AM 11 Kaumakapili Church. Queen Emma's Summer Palace.
10:14AM 12 (News segment was played for the jury.)
10:14AM 13 Iolani Palace.
10:15AM 14 The Blaisdell here in Honolulu.
10:15AM 15 (News segment was played for the jury.)
10:17AM 16 Donating \$200,000 to the City of Honolulu doesn't
10:17AM 17 sound to me like someone engaged in the kind of activity that
10:17AM 18 the government has accused Mr. Miske of.
10:17AM 19 Hokulea.
10:17AM 20 (News segment was played for the jury.)
10:17AM 21 The Doris Duke Estate, Shangri La, 2018, October.
10:19AM 22 (News segment was played for the jury.)
10:20AM 23 Mike and his crew, his workers, the ones who worked
10:20AM 24 with him.
10:20AM 25 Waikiki Yacht Club.

10:20AM 1 We're now in 2020. And as you watch this video, we
10:20AM 2 started in 2002, and for 18 years not one of those places
10:20AM 3 stopped using Michael Miske. Not one of those folks stopped
10:20AM 4 using him.

10:20AM 5 And you're going to learn that during this time, this
10:21AM 6 same time while he's doing all this work for the citizens of
10:21AM 7 Hawaii, what's happening behind the scenes is the FBI is doing
10:21AM 8 one investigation, and a second investigation, and a third
10:21AM 9 investigation, and each one of those investigations not a
10:21AM 10 single charge was brought against Michael Miske.

10:21AM 11 And so when you kind of have to take a round -- a
10:21AM 12 square peg and punch it into a round hole, sometimes it just
10:21AM 13 doesn't fit. And what you're seeing here is the life work of
10:21AM 14 Michael Miske and Kama'aina Termite and Pest Control.

10:22AM 15 Front company or legitimate company?

10:22AM 16 High schools, St. Louis. Shave ice, Matsumoto. All
10:22AM 17 sorts of businesses. Elementary schools all over the state.
10:22AM 18 The Outrigger Waikiki. Mauna Kea Hotel. These aren't the
10:22AM 19 normal types of jobs. Nobody else would take on this project.
10:22AM 20 No one would take the risk. But Michael Miske, he's one of
10:23AM 21 those self-made men who takes on the risk, and built this
10:23AM 22 company and built this on this island. And I'm going to tell
10:23AM 23 you in a little bit he didn't start out going to these kind of
10:23AM 24 schools and doing this.

10:23AM 25 While you're watching this, the others that will take

10:23AM 1 the stand for the government who were committing all these
10:23AM 2 crimes, they weren't doing this kind of stuff. But when the
10:24AM 3 gig is up, they know who to blame. Even if it's an untruth.
10:24AM 4 Hard work, 50-mile-an-hour winds right now when this
10:24AM 5 is happening.

10:24AM 6 (News segment was played for the jury.)

10:29AM 7 Keola La'i. In 2010, there were about 392 homes
10:29AM 8 within -- over on Queen Street, just a couple of blocks from
10:29AM 9 here. The building went up in 2008, and the cabinets that were
10:29AM 10 put in all these homes had termites. They tried, they tried to
10:29AM 11 take individual units and do it that way. Every other company
10:29AM 12 that looked at it wanted to do it that way.

10:29AM 13 The folks who were behind that building had termites
10:29AM 14 flying from home to home inside those 42 stories. The board,
10:30AM 15 the owners, everyone looked for a solution. None was going to
10:30AM 16 be had. The insurance -- and you will hear from the folks who
10:30AM 17 built that building that they were looking at like 24,
10:30AM 18 \$20 million on the line.

10:30AM 19 And then who stepped in? This man. Michael Miske.
10:30AM 20 They had an \$8 million fund to see if they could figure out a
10:30AM 21 way to get rid of those termites. And instead of tenting the
10:30AM 22 outside, Mr. Miske and his team came up with the solution that
10:30AM 23 you would seal it from the inside.

10:30AM 24 Dow Chemical engineers flew in from the mainland
10:30AM 25 during that time. The representatives were there. And for

10:31AM 1 four and a half million dollars he saved a \$20 million lost.

10:31AM 2 Those termites were eradicated, and those homeowners got their

10:31AM 3 homes back. And everyone in that situation, other than the

10:31AM 4 federal government, was happy.

10:31AM 5 The federal government, though, with regulators

10:31AM 6 decided that because there were some irregularities in terms of

10:31AM 7 food that was left or in the garbage down below, it ended up in

10:31AM 8 a \$15,000 consent for a four-and-a-half-million-dollar job that

10:31AM 9 saved 20 to \$24 million. And 30 people working side by side in

10:31AM 10 a room with structured support from the mainland achieved this.

10:32AM 11 Every one of these a success. That's what Michael

10:32AM 12 Miske has been doing.

10:32AM 13 There's the building. There's the team. There's the

10:32AM 14 folks working. How do we solve this problem? How do we put

10:32AM 15 our heads together and do what no one else can do? The Dow

10:32AM 16 Chemical folks there, sealing on the inside, figuring out a way

10:32AM 17 when nobody else could.

10:32AM 18 Running the gas, how do you get the gas up 42 stories?

10:32AM 19 How do you solve this problem? How do you make it all work?

10:33AM 20 How do you get the job done? How do you work with the

10:33AM 21 professionals? And in the end, what you have is a complete and

10:33AM 22 utter success.

10:33AM 23 I showed you this because I try most of my cases in

10:33AM 24 Las Vegas, and I ski on snow. And when you're coming down on a

10:33AM 25 steep incline, you're taking that risk, you're putting it on

10:33AM 1 your boards, and you're taking the risk to go. Similar, if
10:33AM 2 you're here and you go out to the North Shore and you get on
10:33AM 3 one of those big waves. There are those who will accept risk
10:34AM 4 and those -- or those who will not. Michael Miske has been
10:34AM 5 accepting risks all of his life. Why?

10:34AM 6 Well, let me tell you a little bit about Mike. On the
10:34AM 7 mainland you would say he grew up on the wrong side of the
10:34AM 8 tracks. His start was good. His father, Mr. Miske, was with
10:34AM 9 him until the age of six. At the age of six, he died. Mike
10:34AM 10 was extremely close to his father. His father was in the
10:34AM 11 hospital, but Mike didn't learn until he was in his teens how
10:34AM 12 his father died. And his father died by taking his own life by
10:34AM 13 suicide with cyanide. And Mike has carried that sense of
10:34AM 14 abandonment and loss all of his life.

10:34AM 15 Mike then, the Miske family with his mom Dina and
10:35AM 16 Mike, they walked away from them. And so Mike grew up hard,
10:35AM 17 real hard. Mike grew up on the streets trying to figure out
10:35AM 18 how to make it, how to work, how to get somewhere.

10:35AM 19 And at the age of 20, since he was born in 1974, at
10:35AM 20 the age of 20 his son Caleb came into his life. And as Mike
10:35AM 21 held that boy, it was the most beautiful thing he ever had in
10:35AM 22 his arms. And he became his only son.

10:35AM 23 Mike then, as you have seen -- a few years later Caleb
10:35AM 24 was born in 1994 -- a few years later he started Kama'aina
10:35AM 25 Termite and Pest Control in 1999 and 2000, and you've seen his

10:36AM 1 life's work.

10:36AM 2 Let me tell you a little bit Caleb. Caleb did have a

10:36AM 3 friend by the name of Mr. Fraser, Jonathan Fraser. Caleb and

10:36AM 4 Jonathan liked to race cars. They liked to hang out together.

10:36AM 5 And Jonathan oftentimes would stay at Mike's house when things

10:36AM 6 were not good at his own home and stay with Caleb.

10:36AM 7 And Ashley Wong and Jonathan would stay with Mike.

10:36AM 8 And in fact, Caleb, his wife Delia Fabro-Miske, Jonathan and

10:36AM 9 Ashley Wong were staying in Mike's office sleeping there. When

10:36AM 10 the government told you that Mr. Fraser stole a watch, but they

10:36AM 11 didn't tell you that that was a graduation gift to Caleb, and

10:36AM 12 that the watch was stolen and pawned, and Mike eventually got

10:37AM 13 it back. And after that, after that, Mike forgave Jonathan,

10:37AM 14 and was still in his life.

10:37AM 15 And at times they would stay at Mike's house. We'll

10:37AM 16 talk a little bit about the Lumahai house that the government

10:37AM 17 said that -- Mike lives in a small house on Kuuna Street in

10:37AM 18 Kailua and has lived there his whole life. The house they're

10:37AM 19 talking about he built as an investment. Because he's always

10:37AM 20 been a self-made man.

10:37AM 21 So now, I want to fast-forward a bit to November 17,

10:37AM 22 2015. It was a terrible, terrible accident. And if anyone

10:37AM 23 here knows what it's like to have to go and see an accident

10:38AM 24 scene when your son or daughter or granddaughter is involved is

10:38AM 25 a horrific thing.

10:38AM 1 Now, what happened in that accident? Jared Ishiki was
10:38AM 2 working for CSI, a business. He was approaching an
10:38AM 3 intersection, there was a yellow light, and you'll hear
10:38AM 4 testimony that he was traveling 35 miles an hour when he turned
10:38AM 5 left. 35 miles an hour on a turn?

10:38AM 6 Coming towards him -- and I apologize for putting my
10:38AM 7 back -- is Caleb and Jonathan were going through the yellow
10:38AM 8 light. Traveling too fast, yes. Estimated at about 60 miles
10:38AM 9 an hour, but they had the light. Mr. Ishiki had a truck. They
10:38AM 10 had a smaller vehicle. And it was a horrific accident.

10:38AM 11 Jonathan and Caleb were taken to Queens Hospital. In
10:39AM 12 the early part of that day, it looked like Caleb might pass.
10:39AM 13 He developed an infection in one of his legs. And Mike had to
10:39AM 14 make the decision, Do we amputate or do we not? The specialist
10:39AM 15 recommended that you do not. His primary doctor said, You
10:39AM 16 should. And he had to make the call. And he chose to keep the
10:39AM 17 leg.

10:39AM 18 Caleb is recovering from his injuries. The accident
10:39AM 19 is on November 17, 2015. At a certain point the infection in
10:39AM 20 his leg goes to his heart. They are making his heart work.
10:39AM 21 They are trying everything they can in the Queens Hospital.
10:40AM 22 Mike and his family is there, there watching their boy almost
10:40AM 23 leave this earth.

10:40AM 24 Josiah Akau will tell you when the hospital wanted to
10:40AM 25 stop, because he's a fire person, he went up there and he

10:40AM 1 started pushing and pushing and pushing to give him more life.

10:40AM 2 And it worked. And Caleb lived.

10:40AM 3 And what happened was Delia and Caleb had a child

10:40AM 4 Nila, because Delia was pregnant when the accident happened.

10:40AM 5 And so eventually Caleb got to the point where he could hold

10:40AM 6 Nila, and it looked like he was going to recover. And now

10:40AM 7 we're into February and March of 2016.

10:40AM 8 And Mike is making -- working on getting up one story

10:40AM 9 so Caleb can recuperate, and he's -- Caleb is trying to get

10:41AM 10 back, and it looks like he's healthy. So no, the accident

10:41AM 11 didn't take Caleb. Because what happened was the infection

10:41AM 12 that was in his heart which started in his leg moved to his

10:41AM 13 brain, and they saw him go downhill. And then on the 16th of

10:41AM 14 March, he died. Mike has now lost his father and his son.

10:41AM 15 They have a celebration of life shortly thereafter.

10:41AM 16 And contrary to what the government tells you, Mike

10:41AM 17 reached out to Ashley and Jonathan. And Mike established with

10:41AM 18 Delia the connection, and Delia threw a big race party for all

10:42AM 19 of their friends. And Mike supported that. And when Ashley

10:42AM 20 and Jonathan didn't have anywhere else to go, he allowed and

10:42AM 21 said it's fine with living with Delia at the place in Hawaii

10:42AM 22 Kai.

10:42AM 23 Mike blamed himself for Caleb's death. Not Jonathan

10:42AM 24 Fraser. Mike blamed the accident on Jared Ishiki, and that's

10:42AM 25 why he sued him and his company for the fact that they were in

10:42AM 1 the wrong for turning left at 35 miles an hour on a yellow, and
10:42AM 2 received a settlement. Because criminal charges were looked at
10:42AM 3 for Mr. Ishiki and never brought, even though he was found to
10:42AM 4 be the cause of the accident.

10:43AM 5 Mike didn't care who the driver was. But if you want
10:43AM 6 to look at the evidence, what happened? Well, as Caleb was
10:43AM 7 lying in the hospital, we all know that when we get into our
10:43AM 8 cars, the seatbelt goes this way if you're the driver from left
10:43AM 9 to right. And if you're the passenger, it goes this way from
10:43AM 10 right to left. And so as the bruising started happening, there
10:43AM 11 was bruising on Caleb going from the right to the left.

10:43AM 12 He had the photograph, he sent it to someone he knows
10:43AM 13 well, and says, Looks like they were a passenger. That Caleb
10:43AM 14 was the passenger and not the driver. And doctors told him the
10:43AM 15 same thing. And you'll hear from an expert who looked at it
10:44AM 16 and had said that there's no other reason that that bruising
10:44AM 17 could happen.

10:44AM 18 So no, he didn't blame him. He looked at what was
10:44AM 19 just the evidence. And he didn't care because it was the loss
10:44AM 20 of his son. It was loss, not revenge that was motivating Mike.
10:44AM 21 And so when you hear from folks, just remember what do they
10:44AM 22 have to gain, what are they looking at, what are their
10:44AM 23 motivations here.

10:44AM 24 And let me segue to that.

10:44AM 25 The government waited about 25 minutes to talk to you

10:44AM 1 about Counts 2 through 6, which are the murder counts. And
10:44AM 2 they talk about not finding a body.

10:45AM 3 Well, let me ask you this. We've got to break things
10:45AM 4 down simply. So in a murder case, who killed Jonathan Fraser?
10:45AM 5 Will they give you an answer? No. After seven years this
10:45AM 6 remains -- Jonathan Fraser's disappearance remains a missing
10:45AM 7 person case.

10:45AM 8 Second, how did it happen? Will they give you an
10:45AM 9 answer? No. After all this investigation, after all the close
10:45AM 10 to a thousand witnesses, no. Where did it happen? Will they
10:45AM 11 give you an answer? I'm kind of simple, I ask simple
10:45AM 12 questions. Where? They won't give you an answer.

10:45AM 13 And when did it happen? They won't give you an
10:46AM 14 answer. They've said on the 30th of July, 2016, but there are
10:46AM 15 folks who saw Jonathan Fraser after the government thinks he
10:46AM 16 was killed, because they don't know who, how, when or where.

10:46AM 17 What they've given you is a reason why. That's it.
10:46AM 18 Not backed up by anything other than folks who have something
10:46AM 19 to gain by giving them that answer. After all these years
10:46AM 20 they're going to ask you to convict Mike of kidnapping, murder,
10:46AM 21 without answering how, who, where, when, and why.

10:47AM 22 Now, the judge told you when we were selecting you
10:47AM 23 that this is our world, and this isn't yours. So let me tell
10:47AM 24 you how things work in this world. You got a little flavor of
10:47AM 25 it in terms of who the folks are going to be testifying. So

10:47AM 1 let's just start with individuals.

10:47AM 2 Wayne Miller, 2001, for his on benefit committed a

10:47AM 3 bank robbery with a gun, got ten years. Nothing to do with

10:47AM 4 Mike Miske. He brought along the juveniles, he was 18 years

10:47AM 5 old. That's his first charge of using a gun during and in

10:47AM 6 relation to a violent crime, bank robbery. Not complex, got

10:47AM 7 seven years consec.

10:47AM 8 In this case Wayne Miller went to the FBI to gain

10:48AM 9 money in 2017 and said essentially, and I'm not going to use

10:48AM 10 the word, but you'll get it, "Mike F'd me. I want money." The

10:48AM 11 ATF said 100,000. I said 100,000 jokingly, and they said

10:48AM 12 200,000. I want to get a fishing boat, an aluminum boat for

10:48AM 13 \$270,000."

10:48AM 14 I don't know that much about doing shark tours, but

10:48AM 15 270,000 sounds like a lot of money for just an aluminum boat.

10:48AM 16 "I want my supervised release for my bank robbery

10:48AM 17 taken down." And then he gives them information. He

10:48AM 18 interviews, he interviews, he interviews, he interviews, he

10:48AM 19 interviews about six or seven times.

10:49AM 20 So what does he do? He says, I'll tell you how it

10:49AM 21 happened. And he tells them somebody -- tells them who killed

10:49AM 22 Jonathan Fraser. Tells them straight up. He'll testify for

10:49AM 23 the government, the person he identified. Is the government

10:49AM 24 going to say he killed him, Lance Bermudez? No.

10:49AM 25 He says, Let's find a van. I think I've seen the van

10:49AM 1 that they used. So the FBI goes and grabs the van from a
10:49AM 2 junkyard that is placed down at the bay where Mike likes to go.
10:49AM 3 They take the van, they scour the van, they look for any
10:49AM 4 evidence that Jonathan Fraser or Michael Miske or anyone
10:49AM 5 associated has been in that van. Nothing. No DNA, no trace
10:49AM 6 evidence, no nothing.

10:49AM 7 He says, Oh, Mike bought the Painkiller boat
10:50AM 8 specifically for this job. Spent \$450,000 for it. You'll see
10:50AM 9 text messages where Mike had been looking for a boat long
10:50AM 10 before the accident.

10:50AM 11 So in 2017, the FBI swoops down, takes the Painkiller,
10:50AM 12 takes it completely apart, looks for anything that would ever
10:50AM 13 suggest that Mr. Fraser had ever been on that boat. Nothing.

10:50AM 14 In the plan Mr. Miller says, Oh, Mr. Fraser is
10:50AM 15 kidnapped in the morning, taken to Kewalo Basin in Honolulu.
10:50AM 16 Then they go out on a boat, and then someone is hiding on the
10:50AM 17 boat and shoots and kills Jonathan.

10:50AM 18 There's one problem. The boat wasn't at Kewalo Basin
10:51AM 19 in Honolulu. The boat was on the other side of the island, and
10:51AM 20 aerial footage shows that it was docked on the 30th of July,
10:51AM 21 not in the ocean. Oh.

10:51AM 22 Now, Mr. Miller continues to cooperate with the FBI,
10:51AM 23 but Mr. Miller has a serious drug issue because the minute he
10:51AM 24 gets out of prison, he starts dealing drugs again in huge
10:51AM 25 quantities for people that have nothing to do with Michael

10:51AM 1 Miske.

10:51AM 2 And so on count -- excuse me -- Count 11, the

10:51AM 3 kidnapping, what the government didn't tell you about

10:51AM 4 Mr. Miller is while he was working as an FBI informant after a

10:51AM 5 year and a half, he kidnapped a man, he pistol-whipped him, he

10:51AM 6 put a .22 with a silencer to his head, threatened to kill him,

10:52AM 7 while working for the FBI, and they ask you to believe him from

10:52AM 8 the stand. And for that crime, if he was prosecuted, the

10:52AM 9 sentence would be life in prison, no ifs, no buts, no maybes,

10:52AM 10 because it would be the second 924(c), using a firearm, during

10:52AM 11 and in relation to a kidnapping with a silencer.

10:52AM 12 Also, to think about it, if Michael Miske was involved

10:52AM 13 in that, if Michael Miske was involved a year and a half after

10:52AM 14 he's working with the FBI, don't you think Mr. Miller would

10:52AM 15 have gone to the FBI and said, I've got it. I've got the plan.

10:52AM 16 We can set it up. We can grab him. We'll catch him in the

10:52AM 17 action. You'll finally get something.

10:53AM 18 No, he hid it from the FBI. He hid it from them. And

10:53AM 19 then throughout 2017, 2018, he continued to deal drugs. He

10:53AM 20 continued to do these things. Hey, he's the FBI's guy. Until,

10:53AM 21 oh, the DEA gets involved. The DEA has an undercover, and he

10:53AM 22 sells to an undercover. Oops. And he's arrested on August 1st

10:53AM 23 of 2018.

10:53AM 24 At that point he has now committed a life offense.

10:53AM 25 He's taken the FBI and made them into fools. He's done a

10:53AM 1 kidnapping. Which he doesn't tell them about until it's
10:53AM 2 protected under a proffer because the guy he did it with tells
10:53AM 3 them first. And do they prosecute him for that? No. No.
10:54AM 4 There's a saying that comes from the country of India:
10:54AM 5 "To hide one lie, a thousand lies are needed." And I'm going
10:54AM 6 to tell you in this courtroom what happens in here is like we
10:54AM 7 see the clouds coming here, and all of a sudden we get
10:54AM 8 sprinkles, and then the showers come. And lies are going to
10:54AM 9 rain down in this courtroom from that stand.
10:54AM 10 And Mr. Miller will begin. Mr. Miller is going to try
10:54AM 11 to convince you that Michael Miske confessed to him, and he's
10:54AM 12 going to tell you he said it twice. The first time he's at a
10:54AM 13 restaurant. Now closer to trial he's now at his home. He
10:55AM 14 can't tell the difference when he's lying between his home and
10:55AM 15 a restaurant. Because when you're lying little things give you
10:55AM 16 away. And I don't know about you, but the last time someone
10:55AM 17 might be confessing something to you that is of that gravity,
10:55AM 18 you might remember where you were when it happened. He can't
10:55AM 19 because there's no truth to it.
10:55AM 20 Jake Smith also is looking at life, his natural life
10:55AM 21 due to those crimes. That's where his bias comes.
10:55AM 22 Lance Bermudez, another one that they mention, once
10:55AM 23 again he is also looking at the rest of his natural days in
10:55AM 24 prison if he was prosecuted to the full extent of the law.
10:55AM 25 Why? Because these individuals are gang members. The

10:56AM 1 enterprises in this case, there is no Miske Enterprise. The
10:56AM 2 enterprises in this case are La Familia, Shooter Gang, Jake
10:56AM 3 Smith, Lance Bermudez, USO, United Samoan Organization, Nakipi
10:56AM 4 Motorcycle Club, which you will hear testimony is an offshoot
10:56AM 5 of the prison gang USO and the drug dealers, these are the
10:56AM 6 enterprises doing acts.

10:56AM 7 So when Lance Bermudez on August 3rd of 2016 says, Oh,
10:56AM 8 my buddy Anthony Tran just got robbed of a couple of kilos of
10:56AM 9 drug, I'm going to run over, grab Anthony, go out and shoot a
10:56AM 10 couple people. Then later he's going to go to a club that same
10:56AM 11 month and shoot some people. So he's got another attempt
10:56AM 12 murder. Then he's going to steal another car after his car is
10:57AM 13 found, which he stole. And then he's going to go shoot
10:57AM 14 somebody else on September 20th.

10:57AM 15 All these robberies, all these events, all of these
10:57AM 16 things, not one cent will be shown to be given to Michael
10:57AM 17 Miske. They're doing it for their own. But as Jake Smith did
10:57AM 18 when he was coaching other witnesses, we're going to blame it
10:57AM 19 all on Mike and we're going to coach it up. And that's where
10:57AM 20 the collusion starts.

10:57AM 21 In this world, in this world payment is in years. And
10:57AM 22 I ask you this question: If someone is looking at the rest of
10:57AM 23 their life without breathing fresh air on the outside, if they
10:57AM 24 have no hope of doing that, without currying favor to someone
10:57AM 25 who wants to hear what they want to hear, would they lie?

10:58AM 1 Would they lie to have a moment with the people they love, to
10:58AM 2 spend time with their children, to have another shot? That's
10:58AM 3 what this case is about.

10:58AM 4 Michael Miske had absolutely nothing to do with
10:58AM 5 Jonathan Fraser's disappearance. The Fraser family has loss
10:58AM 6 just like Mike was loss. That's what this case is about. If
10:58AM 7 we move to the other counts, those are Counts 2, 3, 4, 5 and 6,
10:58AM 8 during that time period Mike's sole focus was on Caleb and his
10:58AM 9 life.

10:58AM 10 Now, those are Counts 2, 3, 4, 5 and 6. Counts 7 and
10:59AM 11 8 and 9, I want to talk about next.

10:59AM 12 Lindsey Kinney is the focus of Counts 8 and 9.
10:59AM 13 I'm going to return to the podium and read you
10:59AM 14 something.

10:59AM 15 A threat to decapitate a mother of a young child, her
10:59AM 16 husband and a harbor master of Waianae, and their friend, a
10:59AM 17 community and cultural leader in Waianae. Two months later
10:59AM 18 another threat, a threat to hang and decapitate the lieutenant
10:59AM 19 governor, the mayor of Honolulu, and to bash in the skulls of
10:59AM 20 the officers of Samoan descent on the lieutenant governor's
10:59AM 21 security detail.

10:59AM 22 Those aren't my words. Those are the words of a
10:59AM 23 federal prosecutor regarding Lindsey Kinney, who is supposedly
11:00AM 24 the victim of an attempt murder and assault on Counts 8 and 9.

11:00AM 25 So let me tell you what happened. Lindsey Kinney

11:00AM 1 started bombing Michael Miske with social media posts about the
11:00AM 2 death of his son. Lindsey Kinney was the sergeant at arms of
11:00AM 3 the Nakipi Motorcycle Club, who their president has now called a
11:00AM 4 gang. Lindsey Kinney was a drug dealer.

11:00AM 5 And Jacob Smith, who the government told you about,
11:00AM 6 had been fronted drugs, about 15,000 worth, from Lindsey
11:00AM 7 Kinney, and he wouldn't pay. Harry Kauhi had been fronted
11:00AM 8 drugs, he wouldn't pay Lindsey. Norm Akau was letting this
11:00AM 9 happen. All these people had about \$35,000 worth of drugs that
11:01AM 10 were owed.

11:01AM 11 Kinney then begins to bomb Michael Miske. "How are
11:01AM 12 you enjoying your loss?" On social media. Mike asked for a
11:01AM 13 meeting with -- through Norm Akau to say, Hey, this guy, he
11:01AM 14 won't leave me alone. He's doing this about my son.

11:01AM 15 The same guy who, of course, wanted to behead our
11:01AM 16 mayor and the lieutenant governor. And the guy wouldn't meet
11:01AM 17 with him, and continued and continued until on that day Mike
11:01AM 18 said, Enough is enough, I'm going to go out there and I'm going
11:01AM 19 to fight him man to man. We're going to scrap. That was it.

11:01AM 20 So we're at the ranch where the movies are shot.
11:01AM 21 Kinney is down here, Mike is running towards him, and you will
11:01AM 22 hear Jacob Smith's own words, "Mike was running at Kinney."
11:02AM 23 They were going to scrap. Mike is going to be 50 in February.
11:02AM 24 Jacob said, I don't know if he could take him, so I shot in the
11:02AM 25 air, and that was it. No assault, no attempt murder, no scrap.

11:02AM 1 That's all it is.

11:02AM 2 Count 7 involves an individual by the name of Joe Boy
11:02AM 3 Tavares. Joe Boy is someone who is known in derbies, rooster
11:02AM 4 fighting, and is someone who due to that oftentimes goes to and
11:02AM 5 comes away with large amounts of money and cash. So the
11:02AM 6 individuals that you will be hearing who are testifying to you
11:02AM 7 want to rob Joe Boy of that cash, because they often are at
11:03AM 8 derbies where they're looking to rob people.

11:03AM 9 So now after they're all arrested and after the fact,
11:03AM 10 they come up with a story, which is, Oh, Michael Miske wanted
11:03AM 11 to kill Joe Boy, and the offer was \$60,000. I went up there --
11:03AM 12 Lance Bermudez, I went up there at 3:00 in the morning, I sat
11:03AM 13 there several times, and my plan was when Joe Boy comes down to
11:03AM 14 feed the chickens, I'll kill him.

11:03AM 15 Okay. He sits up there, Joe Boy never comes out, and
11:03AM 16 so it never happens. He walks away from -- supposedly the
11:03AM 17 story \$60,000, which never happens.

11:03AM 18 Now, we've got a competing story that Wayne Miller
11:03AM 19 will tell you that, Oh, I paid Harry Kauhi a down payment of
11:03AM 20 \$8,000 to kill Joe Boy Tavares, with \$7,000 afterwards. What
11:04AM 21 happened? Harry took the money. Never did anything. Never
11:04AM 22 happened.

11:04AM 23 The roosters are never fed at 5:00 a.m. They fight at
11:04AM 24 night. It's at 5:00 p.m. And if you look at Joe Boy's house,
11:04AM 25 you can't sit where Lance Bermudez is and even see where the

11:04AM 1 pens are. It's all just a lie. They're behind the house.

11:04AM 2 There's no place to even see them. And Joe Boy never feeds the

11:04AM 3 chickens. Others do. It doesn't make sense. Why? Because to

11:04AM 4 hide one lie, a thousand lies are needed, and they just keep

11:04AM 5 rolling and rolling. That's Counts 7, 8, and 9.

11:04AM 6 When we move to Count 11, I've already told you Wayne

11:04AM 7 Miller is working for the FBI when he and Jonah Ortiz kidnaps

11:04AM 8 somebody.

11:05AM 9 So how does that come about? There's an individual by

11:05AM 10 the name of Mr. Kim. And the person you'll hear testify is

11:05AM 11 Mr. Lee. Mr. Lee started a business called Atlas in 2006, and

11:05AM 12 it was going to have sort of alternative to wood homes and

11:05AM 13 other things here because, as you know, there's a lot of

11:05AM 14 termite problems here.

11:05AM 15 So he got a lot of investors, he started the business,

11:05AM 16 and then it crashed, and they're owed money. Lots of money.

11:05AM 17 So he sues him. But by this point Mr. Lee doesn't have any

11:05AM 18 money. Mr. Kim wants money. Mr. Kim is threatening Mr. Lee

11:05AM 19 all this time. And eventually Mr. Lee is starting to pay him

11:05AM 20 on a payment plan.

11:05AM 21 So how does Preston Kimoto become involved in this,

11:06AM 22 who you've heard about? Well, he's known Mr. Kim's daughter,

11:06AM 23 Annie Edwards or Sunnie, since their days in college. And she

11:06AM 24 goes to Preston and says, Will you help me get the money? And

11:06AM 25 Preston goes to Wayne Miller, and Wayne Miller recruits Jonah

11:06AM 1 Ortiz, and they with Preston for Sunnie, who he's been intimate
11:06AM 2 with for a long time but doesn't want anybody to know, they
11:06AM 3 track him.

11:06AM 4 Miller and Ortiz, their witnesses kidnap him, they
11:06AM 5 threaten him, they punch him, they break his nose. Miller puts
11:06AM 6 the silencer to his head. He doesn't have any money. And who
11:06AM 7 does Miller call? Who are the texts going to? The texts are
11:07AM 8 going to Kimoto.

11:07AM 9 Now, Mr. Miller at a time period walks into Kama'aina
11:07AM 10 Termite, and then leaves. Mr. Kimoto walks in and leaves too.
11:07AM 11 You'll see Michael Miske leave at around 4:30, he comes back at
11:07AM 12 about 5:30. Preston Kimoto will tell you a whole story about
11:07AM 13 how they went to the gym and did all this stuff. Not a truth
11:07AM 14 in it.

11:07AM 15 The folks who were looking for the money to be
11:07AM 16 returned, they're not prosecuted. Jonah Ortiz and Miller --
11:07AM 17 Jonah Ortiz is prosecuted, and Jonah Ortiz, the only reason the
11:07AM 18 FBI ever finds out about Miller's involvement is the minute
11:07AM 19 Miller gets arrested, Ortiz is his supplier. So he calls up
11:07AM 20 Ortiz, sets him up that day. And then Ortiz comes in and says,
11:08AM 21 You know what, Miller did this kidnapping.

11:08AM 22 Now, at this point the FBI has interviewed Mr. Miller
11:08AM 23 about seven times. He's committed a kidnapping. He's sold
11:08AM 24 drugs to a DEA agent.

11:08AM 25 There's a Russian proverb that says it's better to

11:08AM 1 turn back than to get lost. And if a guy has been working for
11:08AM 2 you for seven interviews, has been doing all this stuff,
11:08AM 3 telling you, Oh, no, I'm not committing any crimes, I'm not
11:08AM 4 doing any of this. Lying to the court because he's on
11:08AM 5 supervised release doing all this, fooling everybody around.
11:08AM 6 You might think when somebody else finally gives up that Miller
11:08AM 7 is the guy who kidnapped him, they might say, Enough is enough?
11:08AM 8 But they double down on him. Why?

11:08AM 9 There's an old story that comes from Germany, Hamelin.
11:08AM 10 It's a story of the pied piper. And we have it in -- you know,
11:09AM 11 we talk about it. But the story is the pied piper came to this
11:09AM 12 little town and he could play his instrument, and the rats
11:09AM 13 would follow him out to the water and drown. But when he
11:09AM 14 didn't get paid, what he did in the story is he then had all
11:09AM 15 the children follow him, and they were never seen again.

11:09AM 16 The pied piper in this case is Wayne Miller. It's
11:09AM 17 supposed to be the FBI. They're supposed to be the ones in
11:09AM 18 charge. But Wayne Miller has orchestrated this entire story to
11:09AM 19 his benefit because he will not do life without. Mr. Miske had
11:09AM 20 nothing to do and didn't even know about the kidnapping until
11:10AM 21 after his arrest and saw the charges.

11:10AM 22 Now, Count 15, we talk about -- government mentioned a
11:10AM 23 drug deal in California. Mr. Miske, as I'll show you in a bit,
11:10AM 24 he makes his money from the business that you saw. From that
11:10AM 25 business money, between 2009 and 2018, over \$60 million in

11:10AM 1 gross revenue for Mr. Miske. What did he do with the
11:10AM 2 4.5 million that he got from the Keola La'i job? Commercial
11:10AM 3 fishing, the Rachel fishing vessel, between 2010 and 2020,
11:11AM 4 Michael Miske bought it. There it is.

11:11AM 5 He -- as I said, he is a self-made businessman. He
11:11AM 6 talked to the captain, had the crew. This is one of the best
11:11AM 7 fishing boats out there, and he fished, and he made a lot of
11:11AM 8 money doing it.

11:11AM 9 Now, the government, they couldn't believe -- the feds
11:11AM 10 couldn't believe during their investigations, he must be doing
11:11AM 11 something different.

11:11AM 12 So one time he said the words "white dog," because
11:11AM 13 Caleb's dog was coming back from Alaska to San Diego and was on
11:11AM 14 the boat. And they followed this boat. They followed it to
11:11AM 15 San Diego. They followed it back to see that they were
11:11AM 16 fishing. It came into the harbor here in Honolulu. And just
11:11AM 17 like the Painkiller and just like the van and just like this,
11:12AM 18 they tore apart the boat looking for drugs. And what did they
11:12AM 19 find? Fish. The fish that you and I eat. That was it.

11:12AM 20 He also made his money flipping properties from 1999
11:12AM 21 to 2020. He bought houses, he renovated them, he flipped them,
11:12AM 22 because no one ever thought that a kid who didn't even make it
11:12AM 23 out of high school, who grew up on the wrong side of the
11:12AM 24 tracks, who didn't go to the fancy schools, could make it. But
11:12AM 25 he did because of his head. Because of his head.

11:12AM 1 And so when Wayne Miller talks about this 2014 deal,
11:12AM 2 one that he, once again, hid from the authorities, he says, Oh,
11:13AM 3 Michael Buntenbah and I took \$200,000 apiece in two bags and
11:13AM 4 walked through TSA on our carryons, Hi there, there's \$200,000
11:13AM 5 in here. Nobody noticed.

11:13AM 6 I can't even get a five-ounce thing through my bag
11:13AM 7 these days. If you've got a water in there, it's an emergency.
11:13AM 8 You gotta be kidding me. You gotta be kidding me. It goes
11:13AM 9 through x-ray every time. And you'll know if it looks like
11:13AM 10 there's that kind of money, it's not just going to walk
11:13AM 11 through.

11:13AM 12 But what else do we know? We heard, Oh, he goes
11:13AM 13 there, and they're doing a drug deal.

11:13AM 14 So let me set it for you. California authorities have
11:13AM 15 wiretaps. They're looking at these people. So when Miller and
11:13AM 16 Buntenbah come there, they're surveilling the place, they're
11:13AM 17 surveilling the deal, they know exactly what's happening.
11:14AM 18 Buntenbah and Miller go in there, they're in there, and Miller
11:14AM 19 is claiming he did a drug deal. They get a three-car caravan
11:14AM 20 leaving, and they stop all three cars, and the drugs are in the
11:14AM 21 first car, not in the car that Miller and Buntenbah is in. And
11:14AM 22 they seize the drugs.

11:14AM 23 Miller is arrested while on supervised release. And
11:14AM 24 he hides that from the court and he hides that from his
11:14AM 25 probation officer because he's damn good at fooling people.

11:14AM 1 What's missing? Money. Money. Where is the money?
11:14AM 2 They seize like \$16,000, but they don't seize 300,000 or
11:14AM 3 400,000. What really was happening is someone else who would
11:14AM 4 be identified by the government as Individual A, Sam Kuaana, is
11:14AM 5 a drug dealer as well, like Miller is. Guys fly from the
11:15AM 6 mainland to Hawaii, and they do a dog and pony show that has
11:15AM 7 nothing to do with Michael Miske. And they say, Hey, we got
11:15AM 8 the money, here it is. Here it is. A little trip here, we can
11:15AM 9 do business. So these guys are flying back to do that
11:15AM 10 business. To do that business.

11:15AM 11 And so what he's saying that Michael Miske gave him
11:15AM 12 the money is a lie. One more time.

11:15AM 13 When we get to Count 16, which goes from 2016 to 2008
11:15AM 14 (verbatim), Preston Kimoto is doing his own drug dealing. Many
11:15AM 15 of the people that will come in here are dealing drugs. The
11:15AM 16 one person who's not is Michael Miske. He doesn't deal drugs.
11:15AM 17 He's doing what I showed you he does. And I'm not just telling
11:15AM 18 you I showed you. He is running his businesses.

11:15AM 19 They have wiretaps up. They have wiretaps up during
11:16AM 20 this time. You'll hear Jake Smith, you'll hear Tim Tabuada,
11:16AM 21 you'll hear Hunter Wilson, you'll hear all these other guys.
11:16AM 22 Who will you not hear from? Michael Miske.

11:16AM 23 During this entire time period, from the first
11:16AM 24 investigation in 1998 began as a drug OCDETF investigation.
11:16AM 25 Michael Miske was a target. Not one drug deal, not one

11:16AM 1 consensual monitor, conversation, nothing. The same time
11:16AM 2 period they're telling you he's a crime boss of a RICO
11:16AM 3 organization.

11:16AM 4 Next one, we're now into 2006, an enterprise
11:16AM 5 investigation. He's a target. He's supposed to be dealing
11:16AM 6 drugs. They have the plan. Do they make a buy for Michael
11:17AM 7 Miske? Do they get any evidence against Michael Miske? No.

11:17AM 8 And let me tell you a little bit about bias. Let me
11:17AM 9 tell you a little bit about bias. When you believe
11:17AM 10 something -- you all saw the video -- when you believe
11:17AM 11 somebody, you're supposed to follow the evidence. Not find it
11:17AM 12 and create it yourself.

11:17AM 13 And so then in 2008, not to be deterred, a third
11:17AM 14 investigation, Waimanalo Blues, Mr. Miske is at the top of the
11:17AM 15 food chain. They do wiretaps there. Any time he's on the
11:17AM 16 phone talking, no. Any evidence against him, none. Any
11:17AM 17 conversation, no. Did anyone say anything other than just talk
11:17AM 18 that wasn't backed up by hard evidence? No.

11:17AM 19 So what happens? Mike is doing the business that you
11:17AM 20 saw, goes to the bank. You know, we just got another subpoena
11:18AM 21 from the FBI. And, you know, oh, shit, now I got to change
11:18AM 22 banks. Got to change banks. Go over to this bank.

11:18AM 23 Fear is a huge thing for business, and there's no
11:18AM 24 greater fear than when the FBI decides that they are going to
11:18AM 25 bring a case. When they seize your boat and tear it apart, you

11:18AM 1 kind of have an idea where we're going to be here today, even
11:18AM 2 though three times before nothing is there. But they're going
11:18AM 3 to make it fit. They're going to take that square peg and try
11:18AM 4 to throw it into a round hole.

11:18AM 5 THE COURT: Mr. Kennedy, you're at 83 minutes.

11:18AM 6 MR. KENNEDY: So moving from Count 16, Count 20 is a
11:18AM 7 bank fraud case. Supposedly. There are managing member LLCs.
11:19AM 8 There are managing -- someone who is a manager driven, not a
11:19AM 9 member. And if the member doesn't want to list, they have a
11:19AM 10 manager who runs it. That was disclosed on the paperwork. The
11:19AM 11 loan was made for two Tacoma trucks. They added another
11:19AM 12 manager, Delia and another individual. That's it.

11:19AM 13 And then they interview, and the bank says, Well, we
11:19AM 14 would really -- our policy is really to have the owner of the
11:19AM 15 company guarantee it. Well, you didn't do that here. And the
11:19AM 16 paperwork shows that it's not a member managed, it's a manager
11:19AM 17 member. Just exactly like the state regulations say. No crime
11:19AM 18 there.

11:19AM 19 When we move to the type of charge in Counts 21 and
11:19AM 20 22, along the way an individual Larry Kapu writes a letter in
11:20AM 21 2018. Not because Mike lit a tree at the bay in honor of his
11:20AM 22 son who had died and everyone else who had lost a child, and
11:20AM 23 had one of the most famous musicians on the island play there.
11:20AM 24 He wrote that letter afterwards, and all that was done to the
11:20AM 25 letter was to change the letter to the Honorable Court and

11:20AM 1 attach a business electronic signature to Larry Kapu. That's
11:20AM 2 it. There was no -- no obstruction there at all.

11:20AM 3 When Mike was arrested we were in COVID. He was in
11:20AM 4 lockdown, had no communication. A letter was prepared by
11:20AM 5 someone else to show Kurt Nosal. It was written, someone else
11:20AM 6 affixed a signature to it. Mike was in complete lockdown, had
11:20AM 7 no ability to communicate with his lawyers. That letter then
11:21AM 8 was filed, and he did not act corruptly in doing so.

11:21AM 9 As I sum up here, you're going to hear that the FBI
11:21AM 10 used an informant, who was shot in March of 2017, and year and
11:21AM 11 a half later commits a double homicide where he fires the first
11:21AM 12 shot, and has told the FBI that he's carrying a gun the whole
11:21AM 13 time. And he kills those two people, and they continue to use
11:21AM 14 him.

11:21AM 15 You're going to hear that the individual who said, The
11:21AM 16 Kalihi house is somewhere you should go because Smith and
11:21AM 17 Bermudez may have killed Jonathan Fraser. And when that
11:21AM 18 individual said, La Familia is going to put two in my chest.
11:21AM 19 I'm a dead man if I go into OCCC. And the FBI agent puts his
11:22AM 20 arm around him and says, It's okay, we're here. And two years
11:22AM 21 later La Familia has him killed.

11:22AM 22 This case has the resources that have been spent.
11:22AM 23 Aerial surveillance for years against Mike.

11:22AM 24 I'll give you a little flavor here. Two days -- this
11:22AM 25 has been going on for months, tracking by air. Hours of it.

11:23AM 1 Pole cameras, so many terabytes you couldn't imagine. Close to
11:23AM 2 50 for the folks who know how much a terabyte is. And numerous
11:23AM 3 locations at Mike's business for all of these times. This is
11:23AM 4 just one. Aerial surveillance, pole camera surveillance.

11:23AM 5 And let me tell you why you're watching this.

11:23AM 6 Physical surveillance beginning in December of 2014 on Mike at
11:23AM 7 his home, at his business and anywhere he goes. December. Go
11:23AM 8 to January, January 15th, yeah, that month. February, March,
11:23AM 9 April, May, June, July, August, September, October, November,
11:23AM 10 December, into the next year, into the next year, into the next
11:23AM 11 year. Physical surveillance. Wiretaps. Eight of them. Not a
11:24AM 12 single phone call from Michael Miske.

11:24AM 13 Recorded conversations by anyone working for the FBI,
11:24AM 14 is there even one where you would actually hear Michael Miske's
11:24AM 15 words? No. No. Surveillance at his home, as I said, in
11:24AM 16 Kailua.

11:24AM 17 At the end of this case when you've heard the
11:24AM 18 evidence, not from the lawyers but from the witnesses from the
11:24AM 19 stand, and you've seen the exhibits that you get in the absence
11:24AM 20 of evidence, Michael Miske sits over there as we talked about
11:24AM 21 innocent. He's innocent until and unless the government proves
11:25AM 22 each and every element of any charge beyond a reasonable doubt.
11:25AM 23 And a doubt can arise on reason and common sense, and not just
11:25AM 24 speculation.

11:25AM 25 We're sitting in a murder case where they can't tell

11:25AM 1 you who, they can't tell you how, they can't tell you where,
11:25AM 2 they can't tell you when, and they can't even tell you why.
11:25AM 3 And it's still to this day a missing person case, and there are
11:25AM 4 individuals who saw or believed they saw Mr. Fraser. And
11:25AM 5 there's someone who did.

11:25AM 6 At the end of this case, the Miske Enterprise, it
11:25AM 7 doesn't exist. What does exist is Michael Miske's life work
11:25AM 8 with Kama'aina Termite and Pest Control, his other businesses,
11:26AM 9 and the fact that a kid from the wrong side of the tracks made
11:26AM 10 it. And the people of Hawaii have trusted him for this entire
11:26AM 11 time for all their innovative projects that no one else is
11:26AM 12 doing, the iconic places, and the cultural treasures that are
11:26AM 13 here and near and dear to its people.

11:26AM 14 The federal government sometimes gets it right, and
11:26AM 15 sometimes they get it dead wrong. I'm honored to represent
11:26AM 16 him, and we spent six days talking with you and I'm honored to
11:26AM 17 have you be Mike's judges. At the end of the case I'll ask
11:26AM 18 that you return a not guilty verdict on each and every count.
11:26AM 19 Thank you.

11:26AM 20 THE COURT: All right. So members of the jury, that
11:27AM 21 concludes the proceedings for today. We are going to start, as
11:27AM 22 we will every day from this point forward, at 8:30 in the
11:27AM 23 morning. Thank you for being timely this morning. We will
11:27AM 24 start tomorrow morning at 8:30 with the government's case in
11:27AM 25 chief. At that time the evidence will begin, and the

11:27AM 1 government will call as its first witness.

11:27AM 2 As we go to break for the day, I will remind you once

11:27AM 3 again to refrain from accessing any media or other accounts of

11:27AM 4 this case that may be out there; to refrain from discussing the

11:27AM 5 substance of this case with anyone, including one another,

11:27AM 6 until I advise otherwise; and finally, to refrain from

11:27AM 7 conducting any independent investigation into the facts,

11:27AM 8 circumstances or persons involved.

11:27AM 9 So we will see you at 8:30 tomorrow morning to begin

11:27AM 10 the evidence.

11:27AM 11 (At 11:27 a.m., the jury was excused, and the

11:27AM 12 following proceedings were held:)

11:27AM 13 (Open court out of the presence of the jury.)

11:28AM 14 THE COURT: All right. You may be seated.

11:28AM 15 Counsel, anything that you need to take up with me

11:28AM 16 before we adjourn for the day?

11:28AM 17 MR. INCIONG: Not from the government.

11:28AM 18 THE COURT: All right. Mr. Kennedy?

11:28AM 19 MR. KENNEDY: No, Your Honor.

11:28AM 20 THE COURT: All right. We'll see you tomorrow morning

11:28AM 21 when I expect the government will be calling its first witness.

11:28AM 22 MR. INCIONG: Yes, Your Honor.

11:28AM 23 THE COURT: We are in recess.

11:29AM 24 (Proceedings were concluded at 11:29 a.m.)

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COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, March 25, 2024.

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13 /s/ Gloria T. Bediamol

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15 RMR, CRR, FCRR

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